

the enactment of the bill providing for the registration of aliens; to the Committee on Immigration and Naturalization.

1266. By Mr. MANLOVE: Petition of sundry citizens of Nevada, Mo., against compulsory Sunday observance; to the Committee on the District of Columbia.

1267. By Mr. O'CONNELL of New York: Petition of the Moran Towing & Transportation Co., of New York, for favoring the passage of House bill 5709; to the Committee on Naval Affairs.

1268. Also, petition of the Chamber of Commerce of the United States of America, Washington, favoring the passage of House bill 10200, for the acquisition and construction of American Government buildings in foreign cities; to the Committee on Foreign Affairs.

1269. Also, petition of the United States Customs Guards Association of the Port of San Francisco, Calif., appealing to Congress for a living wage scale; to the Committee on the Merchant Marine and Fisheries.

1270. Also, petition of the Teachers' Union of New York, against all proposed amendments to the District appropriation bill in its present form that tend to cast suspicion on loyal and law-abiding teachers; to the Committee on Appropriations.

1271. Also, petition of the National Association of Manufacturers of New York, favoring the passage of the Graham bill (H. R. 7907) to increase the salaries of Federal judges; to the Committee on the Judiciary.

1272. Also, petition of the Associated American Chamber of Commerce of China and Seattle Chamber of Commerce, favoring the passage of House bill 10200, the consular buildings bill; to the Committee on Foreign Affairs.

1273. By Mr. PERKINS: Petition placing the Real Estate Board of Rutherford, N. J., on record in favor of House bill 4798, introduced by MARTIN L. DAVEY, of Ohio; to the Committee on Rules.

1274. By Mr. TILSON: Petition of G. B. MacDonald and others, of West Haven, Conn., protesting against compulsory Sunday observance; to the Committee on the District of Columbia.

1275. Also, petition of Mrs. Mabel E. Ladd and others, Los Angeles, Calif., urging the passage of House bill 98; to the Committee on Pensions.

1276. By Mr. WELSH: Petition of the Rotary Club of Philadelphia, by its secretary, Mr. Frank Honicker, protesting against the passage of the bill known as the compulsory Sunday observance bill for the District of Columbia; also telegrams protesting against compulsory Sunday observance bill, signed by Rev. W. A. Nelson, Frank Honicker, C. V. Leach, and Newton H. Graw; to the Committee on the District of Columbia.

1277. Also, petition of New Jersey branch of the Women's International League for Peace and Freedom, favoring the passage of House bill 8538 to prohibit "any course of military training from being made compulsory as to any student in any educational institution other than a military school"; to the Committee on Military Affairs.

1278. Also, petition signed by residents of Philadelphia, Pa., protesting against the passage of compulsory Sunday observance bills (H. R. 7179 or 7822) or any other national religious legislation which may be pending; to the Committee on the District of Columbia.

## SENATE

TUESDAY, March 16, 1926

(Legislative day of Monday, March 15, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

Mr. JONES of Washington. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Dale	Harrell	Metcalf
Bayard	Deneen	Harris	Moses
Bingham	Edwards	Harrison	Neely
Blease	Ernst	Hefflin	Norris
Borah	Fernald	Howell	Nye
Bratton	Fess	Johnson	Oddie
Brookhart	Fletcher	Jones, Wash.	Overman
Broussard	Frazier	Kendrick	Phipps
Bruce	George	Keyes	Pine
Butler	Gerry	King	Pittman
Cameron	Gillett	La Follette	Ransdell
Capper	Glass	McKellar	Reed, Pa.
Caraway	Goff	McLean	Robinson, Ind.
Copeland	Gooding	McNary	Sackett
Couzens	Greene	Mayfield	Sheppard
Cummins	Hale	Means	Simmons

Smoot	Trammell	Warren	Willis
Stanfield	Tyson	Watson	
Stephens	Wadsworth	Wheeler	
Swanson	Walsh	Williams	

Mr. HEFLIN. My colleague [Mr. UNDERWOOD] is absent on account of illness.

The VICE PRESIDENT. Seventy-seven Senators having answered to their names, a quorum is present. The Senate will receive a message from the House of Representatives.

### MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that, pursuant to the act of June 5, 1924, the Speaker had appointed Mr. WINTER and Mr. HILL of Washington as members of the joint congressional committee created to investigate the land grants of the Northern Pacific Railway Co. in place of Mr. WILLIAMS and Mr. RAKER, deceased.

The message returned to the Senate, in compliance with its request, the following bills:

S. 2141. An act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Assiniboin Indians may have against the United States, and for other purposes; and

S. 2868. An act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in claims which the Crow Indians may have against the United States, and for other purposes.

The message also announced that the House had passed without amendment the following bills of the Senate:

S. 122. An act granting the consent of Congress to the Iowa Power & Light Co. to construct, maintain, and operate a dam in the Des Moines River; and

S. 3173. An act granting the consent of Congress to the State roads commission of Maryland, acting for and on behalf of the State of Maryland, to reconstruct the present highway bridge across the Susquehanna River between Havre de Grace, in Harford County, and Perryville, in Cecil County.

The message further announced that the House had passed the following bills and a joint resolution in which it requested the concurrence of the Senate:

H. R. 96. An act authorizing an appropriation of not more than \$3,000 from the tribal funds of the Indians of the Quinalt Reservation, Wash., for the construction of a system of water supply at Taholah on said reservation;

H. R. 292. An act to authorize the Secretary of Agriculture to acquire and maintain dams in the Minnesota National Forest needed for the proper administration of the Government land and timber;

H. R. 2830. An act to legalize a wharf and marine railway owned by George Peppler, in Finneys Creek, at Wachapreague, Accomac County, Va.;

H. R. 5012. An act to legalize a pier into the Atlantic Ocean at the foot of Rehoboth Avenue, Rehoboth Beach, Del.;

H. R. 6117. An act to amend an act entitled "An act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," approved March 12, 1914;

H. R. 6244. An act to authorize the Secretary of the Treasury to exchange the present Federal building and site in the city of Rutland, Vt., for the so-called memorial building and site in said city, to acquire such additional land as may be necessary, and to construct a suitable building thereon for the use and accommodation of the post office, United States courts, and other governmental offices;

H. R. 6260. An act to convey to the city of Baltimore, Md., certain Government property;

H. R. 6730. An act to detach Fulton County from the Jonesboro division of the eastern judicial district of the State of Arkansas and attach the same to the Batesville division of the eastern judicial district of said State;

H. R. 7081. An act to authorize reimbursement of the government of the Philippine Islands for maintaining alien crews prior to April 6, 1917;

H. R. 7086. An act providing for repairs, improvements, and new buildings at the Seneca Indian School at Wyandotte, Okla.;

H. R. 7178. An act authorizing the sale of certain abandoned tracts of land and buildings;

H. R. 7752. An act to authorize the leasing for mining purposes of land reserved for Indian agency and school purposes;

H. R. 8646. An act providing for a grant of land to the county of San Juan, in the State of Washington, for recreational and public-park purposes;

H. R. 8918. An act authorizing the construction of a bridge across the Mississippi River at or near Louisiana, Mo.;

H. R. 9037. An act validating certain applications for and entries of public lands, and for other purposes;

H. R. 9346. An act granting the consent of Congress to the construction of a bridge across the Rio Grande;

H. R. 9393. An act authorizing the construction of a bridge across Rock River at the city of Beloit, county of Rock, State of Wisconsin;

H. R. 9455. An act to dedicate as a public thoroughfare a narrow strip of land owned by the United States in Bardstown, Ky.;

H. R. 9460. An act granting the consent of Congress to the highway department of the State of Minnesota to reconstruct a bridge across the Mississippi River between the city of Anoka, in Anoka County, and Champlin, in Hennepin County, Minn.;

H. R. 9596. An act granting the consent of Congress to the board of county commissioners of Aitkin County, Minn., to construct a bridge across the Mississippi River;

H. R. 9599. An act granting the consent of Congress to the city of Louisville, Ky., to construct a bridge across the Ohio River at or near said city;

H. R. 9634. An act granting the consent of Congress to the Yell and Pope County bridge district, Dardanelle and Russellville, Ark., to construct, maintain, and operate a bridge across the Arkansas River at or near the city of Dardanelle, Yell County, Ark.;

H. R. 9688. An act granting the consent of Congress to the construction, maintenance, and operation of a bridge across Sandusky Bay at or near Bay Bridge, Ohio;

H. R. 9971. An act for the regulation of radio communications, and for other purposes;

H. R. 10200. An act for the acquisition of buildings and grounds in foreign countries for the use of the Government of the United States of America; and

H. J. Res. 131. Joint resolution authorizing the Federal Reserve Bank of New York to invest its funds in the purchase of a site and the building now standing thereon for its branch office at Buffalo, N. Y.

#### ENROLLED BILLS SIGNED

The message also announced that the Speaker of the House had affixed his signature to the following enrolled bills, and they were thereupon signed by the Vice President:

H. R. 8316. An act granting the consent of Congress to the State Highway Commission of the State of Alabama to construct a bridge across the Coosa River near Wetumpka, Elmore County, Ala.;

H. R. 8382. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tombigbee River near Aliceville on the Gainsville-Aliceville road in Pickens County, Ala.;

H. R. 8386. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across Elk River, on the Athens-Florence road, between Lauderdale and Limestone Counties, Ala.;

H. R. 8388. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tennessee River near Scottsboro, on the Scottsboro-Fort Payne road in Jackson County, Ala.;

H. R. 8389. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tennessee River near Whitesburg Ferry, on the Huntsville-Lacey Springs road, between Madison and Morgan Counties, Ala.;

H. R. 8390. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tombigbee River near Jackson, on the Jackson-Mobile road, between Washington and Clarke Counties, Ala.;

H. R. 8391. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tombigbee River, on the Butler-Linden road, between the counties of Choctaw and Marengo, Ala.;

H. R. 8463. An act granting the consent of Congress to the construction of a bridge across the Red River at or near Moncla, La.;

H. R. 8511. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Tombigbee River near Gainesville, on the Gainesville-Eutaw road, between Sumter and Green Counties, Ala.;

H. R. 8521. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Coosa River near Childersburg, on the Childersburg-Birmingham road, between Shelby and Talladega Counties, Ala.;

H. R. 8522. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Coosa River near Fayetteville, on the Columbia-Sylacauga road, between Shelby and Talladega Counties, Ala.;

H. R. 8524. An act granting the consent of Congress to the highway department of the State of Alabama to reconstruct a bridge across Pea River near Samson on the Opp-Samson road in Geneva County, Ala.;

H. R. 8525. An act granting the consent of Congress to the highway department of the State of Alabama to reconstruct a bridge across Pea River near Geneva on the Geneva-Florida road in Geneva County, Ala.;

H. R. 8526. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Choctawhatchee River on the Wicksburg-Daleville road, between Dale and Houston Counties, Ala.;

H. R. 8527. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across Pea River at Elba, Coffee County, Ala.;

H. R. 8528. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Coosa River on the Clanton-Rockford road, between Chilton and Coosa Counties, Ala.;

H. R. 8536. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across Tennessee River near Guntersville on the Guntersville-Huntsville road in Marshall County, Ala.;

H. R. 8537. An act granting the consent of Congress to the highway department of the State of Alabama to construct a bridge across the Coosa River near Pell City on the Pell City-Anniston road, between St. Clair and Calhoun Counties, Ala.;

and  
H. R. 9095. An act to extend the time for commencing and completing the construction of a bridge across the St. Francis River near Cody, Ark.

#### DISPOSITION OF USELESS PAPERS

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Treasury, transmitting, pursuant to law, supplementary schedules and lists of papers and documents, etc., on the files of the Treasury Department which are not needed in the transaction of public business and have no permanent value, and asking for action looking to their disposition, which was referred to a joint select committee on the disposition of useless papers in the executive departments. The Vice President appointed Mr. SMOOT and Mr. SIMMONS members of the committee on the part of Senate.

#### PETITIONS AND MEMORIALS

Mr. WARREN presented a petition of the Societa Italiana Di M. S., A. Diaz, of Cheyenne, Wyo., praying for the acceptance by the Senate of the terms of the Italian debt settlement, which was ordered to lie on the table.

Mr. BINGHAM presented the petition of the League of Women Voters of the Territory of Hawaii, praying for the reappointment of Members of the Senate and House of Representatives of the Territory of Hawaii, which was referred to the Committee on Territories and Insular Possessions.

Mr. WILLIS presented a letter, in the nature of a petition, from Greer Maréchal, president of the Dayton (Ohio) Patent Law Association, protesting on behalf of the association against the passage of the bill (S. 2547) to protect trade-marks used in commerce, to authorize the registration of such trade-marks, and for other purposes, which was referred to the Committee on Patents.

He also presented papers in the nature of memorials of the Board of Commerce of Lima, and the Chamber of Commerce of Mansfield, both in the State of Ohio, protesting against the passage of the so-called Gooding long and short haul bill, which were ordered to lie on the table.

He also presented a resolution adopted by the Akron (Ohio) Chamber of Commerce protesting against the passage of the so-called Gooding long and short haul bill, which was ordered to lie on the table and to be printed in the RECORD, as follows:

AKRON CHAMBER OF COMMERCE,  
Akron, Ohio, March 6, 1926.

Senator FRANK B. WILLIS,

Washington, D. C.

MY DEAR SENATOR WILLIS: The board of directors of the Akron Chamber of Commerce, upon the recommendation of the chamber's transportation committee, unanimously adopted the following resolution:

"Whereas bill S. 575, introduced by Senator GOODING December 8, 1925, is now before Congress for consideration; and

"Whereas the bill in effect will require a rigid application of the fourth section of the interstate commerce act when freight rates are made in competition with rates via water routes either actual or potential, direct or indirect; and

"Whereas such bill would remove the discretion now vested in the Interstate Commerce Commission to authorize departures from the act; and



"Whereas it would result in economic loss to established industry designed to serve markets under rate structures that have built up the country along practical lines; and

"Whereas we believe that authority to depart from rigid application of fourth section of the act should remain with the commission, in whom we have confidence: Be it

*Resolved*, That the Akron Chamber of Commerce is opposed to the passage of the Gooding bill, S. 575, and that copies of this resolution be sent to our representative in Congress."

Respectfully submitted in behalf of the directors,

VINCENT S. STEVENS,  
Secretary.

Mr. McLEAN presented petitions of the retail board of the chamber of commerce, the Association of Insurance Agents, Business and Professional Women's Club (Inc.), American Society of Mechanical Engineers, Associated General Contractors of America, Association of Credit Men, the Traffic Association, the Rotary Club, and the Kiwanis Club, all of Bridgeport, Conn., praying the granting of an appropriation for the construction of a new post-office building in the city of Bridgeport, Conn., which were referred to the Committee on Public Buildings and Grounds.

He also presented a petition of the retirement committee of the National Association of Postal Supervisors, of New Haven, Conn., praying for the passage of the so-called civil service employees' retirement bill, which was referred to the Committee on Civil Service.

He also presented a memorial of Charity Chapter, No. 61, Order of the Eastern Star, of Mystic, Conn., remonstrating against the passage of the so-called Kendall bill (H. R. 4478) to prevent the United States Government from printing stamped envelopes with return card on corner, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Walter L. Bevin's Auxiliary to Charles B. Bowen Camp, United Spanish War Veterans, of Meriden, Conn., praying for the passage of legislation granting increased pensions to Spanish-American War veterans, their widows, and dependents, which was referred to the Committee on Pensions.

He also presented a petition of New Haven Council, No. 293, United Commercial Travelers of America, of New Haven, Conn., praying for the passage of House bill 4497, providing for the repeal of the so-called Pullman surcharge on railroad tickets, which was referred to the Committee on Interstate Commerce.

He also presented a memorial of St. Monica's Guild, of Pomfret Center, Conn., remonstrating against the passage of the so-called Curtis-Reed bill, creating a Federal department of education, as being an interference with the rights of the States, which was referred to the Committee on Education and Labor.

He also presented a memorial of the Manufacturers' Association of Hartford County, Conn., remonstrating against the passage of House bill 10, providing for compulsory use of the metric system, which was referred to the Committee on Manufactures.

#### REPORTS OF COMMITTEES

Mr. CAPPER, from the Committee on the District of Columbia, to which was referred the bill (H. R. 4505) to authorize the Secretary of War to permit the delivery of water from the Washington Aqueduct pumping station to the Arlington County sanitary district, reported it without amendment and submitted a report (No. 385) thereon.

Mr. BINGHAM, from the Committee on Commerce, to which was referred the bill (H. R. 9007) granting the consent of Congress to Harry E. Bovay to construct, maintain, and operate bridges across the Mississippi and Ohio Rivers at Cairo, Ill., reported it with amendments and submitted a report (No. 386) thereon.

#### BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. McLEAN:

A bill (S. 3575) granting an increase of pension to Virginia Tysoe (with accompanying papers); to the Committee on Pensions.

By Mr. HARRELD:

A bill (S. 3576) authorizing interstate compacts between the States of Oklahoma, Kansas, Colorado, New Mexico, Texas, Arkansas, Louisiana, Mississippi, or between any of them, or between any of the States of the Union; for the purpose of control of floods and the conservation of flood waters, and the application of such waters to beneficial uses; and for the diminution of injury and damage by floods; for the security of intrastate and interstate commerce, and the transportation of the United States mails, and military; and for the purpose

of agreeing upon control of conservation districts created under such compact, and promoting agreement on the apportionment of benefits and costs thereof, and assumption of benefits and cost thereof; for division of revenue, if any therefrom, and for other purposes, and providing for the participation of the United States of America therein, and making appropriation therefor; to the Committee on Interstate Commerce.

By Mr. FESS:

A bill (S. 3577) granting the consent of Congress to the construction, maintenance, and operation of a bridge across Sandusky Bay at or near Bay Bridge, Ohio; to the Committee on Commerce.

By Mr. FLETCHER:

A bill (S. 3578) for the relief of William C. Harlee; to the Committee on Claims.

By Mr. JONES of Washington:

A bill (S. 3579) extending the period of time for homestead entries on the south half of the diminished Colville Indian Reservation; to the Committee on Indian Affairs.

By Mr. COPELAND:

(By request.) A bill (S. 3580) to retard the extermination of migratory game and legitimate sport by the reduction of bag limits and open seasons; to the Committee on Agriculture and Forestry.

A bill (S. 3581) granting a pension to Thomas Armstrong; and

A bill (S. 3582) granting a pension to Michael H. Daly; to the Committee on Pensions.

By Mr. COUZENS:

A bill (S. 3583) to provide for the appointment of postmasters, officers, and employees of the customs and internal-revenue services and other branches of the Government service;

A bill (S. 3584) to amend section 6 of the act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, approved August 24, 1912;

A bill (S. 3585) to amend the act entitled "An act to regulate and improve the civil service of the United States," approved January 16, 1883, as amended; to the Committee on Civil Service; and

A bill (S. 3586) granting an increase of pension to Susan Van Gilder; to the Committee on Pensions.

By Mr. ROBINSON of Indiana:

A bill (S. 3587) for the relief of O. M. Enyart (with accompanying papers); to the Committee on Claims.

By Mr. MOSES:

A bill (S. 3588) granting an increase of pension to Emma A. Bass (with accompanying papers); and

A bill (S. 3589) granting an increase of pension to Michael Mohan (with accompanying papers); to the Committee on Pensions.

By Mr. HARRELD (by request):

A joint resolution (S. J. Res. 73) authorizing and directing the Secretary of the Interior to extend preference rights to certain applicants under the Red River relief act, and for other purposes; to the Committee on Public Lands and Surveys.

#### CONSOLIDATION OF NATIONAL BANKING ASSOCIATIONS

Mr. BAYARD submitted an amendment intended to be proposed by him to the bill (H. R. 2) to amend an act entitled "An act to provide for the consolidation of national banking associations," approved November 7, 1918; to amend section 5136 as amended, section 5137, section 5138 as amended, section 5142, section 5150, section 5155, section 5190, section 5200 as amended, section 5202 as amended, section 5208 as amended, section 5211 as amended, of the Revised Statutes of the United States; and to amend section 9, section 13, section 22, and section 24 of the Federal reserve act, and for other purposes, which was referred to the Committee on Banking and Currency and ordered to be printed.

#### EXPENSES OF JOINT COMMITTEE ON MUSCLE SHOALS

Mr. SACKETT. Mr. President, I ask leave on behalf of the Senator from Illinois [Mr. DENCKEN] to submit a concurrent resolution for the purpose of paying the expenses of the Muscle Shoals committee recently appointed. I ask that the resolution may be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

The resolution (S. Con. Res. 4) was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate, as follows:

*Resolved by the Senate (the House of Representatives concurring).* That the joint committee on Muscle Shoals, created by House Concurrent Resolution 4 of the Sixty-ninth Congress, is authorized to sit during the sessions and recesses of the Sixty-ninth Congress, to call before it the foremost engineers and such other experts as will command the confidence of the Congress to testify under oath; to employ



a civil engineer, who shall be the technical adviser to the committee, and such other experts and clerical assistants as may be deemed necessary; to employ a stenographer to report its proceedings, the cost of such stenographic service not to exceed 25 cents per hundred words; and to incur such other expenses as it deems advisable in making its report and conducting the negotiations. The expenses so incurred shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives.

#### HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and a joint resolution were severally read twice by title and referred as indicated below:

H. R. 292. An act to authorize the Secretary of Agriculture to acquire and maintain dams in the Minnesota National Forest needed for the proper administration of the Government land and timber; to the Committee on Agriculture and Forestry.

H. R. 6117. An act to amend an act entitled "An act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," approved March 12, 1914; to the Committee on Territories and Insular Possessions.

H. R. 6730. An act to detach Fulton County from the Jonesboro division of the eastern judicial district of the State of Arkansas and attach the same to the Batesville division of the eastern judicial district of said State; to the Committee on the Judiciary.

H. R. 10200. An act for the acquisition of buildings and grounds in foreign countries for the use of the Government of the United States of America; to the Committee on Foreign Relations.

H. R. 8646. An act providing for a grant of land to the county of San Juan, in the State of Washington, for recreational and public-park purposes; and

H. R. 9037. An act validating certain applications for and entries of public lands, and for other purposes; to the Committee on Public Lands and Surveys.

H. R. 96. An act authorizing an appropriation of \$3,000 from the tribal funds of the Indians of the Quinaielt Reservation, Wash., for the construction of a system of water supply at Taholah on said reservation;

H. R. 7086. An act providing for repairs, improvements, and new buildings at the Seneca Indian School at Wyandotte, Okla.; and

H. R. 7752. An act to authorize the leasing for mining purposes of land reserved for Indian agency and school purposes; to the Committee on Indian Affairs.

H. R. 6244. An act to authorize the Secretary of the Treasury to exchange the present Federal building and site in the city of Rutland, Vt., for the so-called memorial building and site in said city, to acquire such additional land as may be necessary, and to construct a suitable building thereon for the use and accommodation of the post office, United States courts, and other governmental offices; and

H. R. 6260. An act to convey to the city of Baltimore, Md., certain Government property; to the Committee on Public Buildings and Grounds.

H. R. 7081. An act to authorize reimbursement of the government of the Philippine Islands for maintaining alien crews prior to April 6, 1917; to the Committee on Claims.

H. R. 7178. An act authorizing the sale of certain abandoned tracts of land and buildings; and

H. R. 9455. An act to dedicate as a public thoroughfare a narrow strip of land owned by the United States in Bardstown, Ky.; to the Committee on Public Buildings and Grounds.

H. R. 2830. An act to legalize a wharf and marine railway owned by George Pepler in Finneys Creek, at Wachapreague, Accomac County, Va.;

H. R. 5012. An act to legalize a pier into the Atlantic Ocean at the foot of Rehoboth Avenue, Rehoboth Beach, Del.;

H. R. 8918. An act authorizing the construction of a bridge across the Mississippi River at or near Louisiana, Mo.;

H. R. 9346. An act granting the consent of Congress to the construction of a bridge across the Rio Grande;

H. R. 9393. An act authorizing the construction of a bridge across Rock River at the city of Beloit, county of Rock, State of Wisconsin;

H. R. 9460. An act granting the consent of Congress to the highway department of the State of Minnesota to reconstruct a bridge across the Mississippi River between the city of Anoka, in Anoka County, and Champlin, in Hennepin County, Minn.;

H. R. 9596. An act granting the consent of Congress to the board of county commissioners of Aitkin County, Minn., to construct a bridge across the Mississippi River;

H. R. 9599. An act granting the consent of Congress to the city of Louisville, Ky., to construct a bridge across the Ohio River at or near said city;

H. R. 9634. An act granting the consent of Congress to the Yell and Pope County bridge district, Dardanelle and Russellville, Ark., to construct, maintain, and operate a bridge across the Arkansas River at or near the city of Dardanelle, Yell County, Ark.; and

H. R. 9688. An act granting the consent of Congress to the construction, maintenance, and operation of a bridge across Sandusky Bay at or near Bay Bridge, Ohio; to the Committee on Commerce.

H. J. Res. 131. Joint resolution authorizing the Federal Reserve Bank of New York to invest its funds in the purchase of a site and the building now standing thereon for its branch office at Buffalo, N. Y.; to the Committee on Banking and Currency.

#### REGULATION OF RADIO COMMUNICATIONS

H. R. 9971. An act for the regulation of radio communications, and for other purposes, was read twice by its title.

Mr. JONES of Washington. Mr. President, I desire to make a brief statement in regard to the radio bill (H. R. 9971) which passed the House and has just been laid before the Senate. I think the Commerce Committee really has jurisdiction of such measures. My colleague [Mr. DILL], who is very much interested in radio matters and who is a member of the Committee on Interstate Commerce, conferred with me at the beginning of the session, and, because of his membership on that committee, he expressed a desire that a measure relating to radio, which he had introduced, go to the Committee on Interstate Commerce. Something like that occurred at the last session of Congress, and I stated that I had no opposition to the measure going to the Committee on Interstate Commerce. Under those circumstances, without conceding that the Committee on Commerce has no jurisdiction over such matters, for as a matter of fact I think it has, I am perfectly willing that this measure may go to the Committee on Interstate Commerce.

The VICE PRESIDENT. Without objection, the bill will be referred to the Committee on Interstate Commerce.

#### CLAIMS AGAINST THE UNITED STATES

Mr. KING. Mr. President, yesterday, when we had under consideration Senate bill 1912, which gave jurisdiction to the heads of departments and to executive agencies to pass upon claims against the Government for torts up to \$5,000, and which also gave to the Employees' Compensation Commission authority to pass upon certain claims up to \$5,000, I asked the Senator from Colorado [Mr. MEANS] if he had not received a letter from the Attorney General of the United States which disapproved of that legislation. The chairman of the committee stated that he did not recollect having had such a communication. I had been advised that such a communication had been sent to the chairman of the Committee on Claims. One of the assistants to the Attorney General has furnished me a copy of a letter which he tells me was addressed to the Senator from Colorado, the chairman of the Committee on Claims, on February 26, 1926, which I will now read, in which the Attorney General states as follows:

MY DEAR SENATOR: In response to your request for the benefit of my views concerning S. 1912, a bill "To provide a method for the settlement of claims arising against the Government of the United States in sums not exceeding \$5,000 in any one case," I beg to submit the following:

This bill proposes to give to the heads of departments and independent establishments of the Government the authority to consider, adjust, and determine claims for property damage, and to the Employees' Compensation Commission the authority to consider, adjust, and determine claims for personal injury or death where such claims do not exceed \$5,000 and arise on account of the alleged negligence of officers or employees of the Government within the scope of their employment.

Until recently the Government has never accepted any liability on account of torts. This principle is fundamental in the system of any government or sovereignty, and the only recent exceptions are where certain executive officers have been given power to adjust the claims of persons injured by Government agents, such as injury from mail wagons, etc., and liability for torts in admiralty cases.

This department has heretofore taken the view that any acknowledgment by the Government of liability for torts is a dangerous precedent and a radical departure from the long-established principles of our law and Government. In February, 1925, a bill somewhat similar to S. 1912 was pending in the House of Representatives, and by a letter dated February 26, 1925 (a copy of which is inclosed herewith), this department indicated its attitude as above set out. Heretofore such claims have been considered only by Congress and allowed by Congress as an act of grace rather than as an acknowledgment of any legal liability.

Respectfully,

JOHN G. SARGENT,  
Attorney General.



Accompanying the letter signed by the Attorney General is a copy of a letter which was signed by the Acting Attorney General, addressed to Hon. George W. Edmonds, chairman of the Committee on Claims of the House of Representatives, dated February 26, 1925, which takes the same position as that taken by the Attorney General in the letter which I have just read. I shall not ask that this letter be placed in the RECORD; but in view of what I conceive to be the importance of the legislation and its dangerous character, I think the attention of the House of Representatives ought to be challenged to the bill, because it has passed this body; and I take this opportunity of inviting the attention of the House committee to the bill when it reaches the committee to which it may be assigned. I can only repeat that in my judgment the proposed legislation, as stated by the Attorney General, is dangerous, and I regret exceedingly that the bill passed the Senate.

#### INDEPENDENT OFFICES APPROPRIATIONS

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 9341) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1927, and for other purposes.

The VICE PRESIDENT. The question is on the amendment of the committee, on page 14, to insert lines 9 to 13.

Mr. PITTMAN. Mr. President, I ask unanimous consent that the appropriation bill be laid aside temporarily and that Senate bill 575 be proceeded with. I gave notice that I would discuss Senate bill 575 this morning, and I think this course is agreeable to the chairman of the Committee on Appropriations [Mr. WARREN].

Mr. WARREN. I have no objection.

The VICE PRESIDENT. Without objection the pending appropriation bill will be temporarily laid aside and Senate bill 575 will be proceeded with.

#### LONG-AND-SHORT-HAUL CLAUSE OF THE INTERSTATE COMMERCE ACT

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 575) to amend section 4 of the interstate commerce act.

Mr. PITTMAN. Mr. President, I may give undue importance to this subject because I have studied it intensely for a great many years.

Mr. GOODING. Mr. President, may we not have order in the Chamber? There is a great deal of interest among people all over the country in the pending measure. The Senator from Nevada has been fighting for a long and short haul law for many years, long before I came to the Senate. I think he is entitled to very close attention on the part of Senators because I am sure he is able to discuss the question with a great deal of intelligence on account of his information and study of the matter for so many years.

The VICE PRESIDENT. The Senate will be in order. [After a pause.] The Senator from Nevada will proceed.

Mr. PITTMAN. Mr. President, I realize that we are taught by certain interests to understand that this is purely a local question. In the opinion that has just been handed down by the Interstate Commerce Commission we find that by a vote of 7 to 3 the commission denied the application of the seven western railroads to reduce the freight rates on through freight to coast points sufficiently low that in their opinion they would get half of the trade of the Panama Canal, without at the same time reducing the rates at intermediate points.

In the decision there was a dissent by three of the commissioners. One of the dissentants was former Congressman Esch, now Commissioner Esch. He again states what he has said before, that the only persons who are opposing the discrimination in favor of the competitive points are the people of the intermountain country. Chambers of commerce all over the country have been led to believe exactly the same thing. I do not believe there is one per cent of the membership of the chambers of commerce of the country which have passed resolutions on the subject who have the slightest idea what it involves. They believe that it is a fight and solely a fight of the intermountain country against discrimination. In order that Senators may know as a matter of fact that some of their own constituents are interested in the matter, let me read from the opinion of the commission with reference to those who opposed the discrimination which the applicants sought and which they may again seek to-morrow and which may be granted to them to-morrow. I shall now read from the opinion of the Interstate Commerce Commission rendered upon Saturday last wherein they denied the application for departure from the fourth section of the interstate commerce act, thus denying the privilege of putting into effect lower rates to the Pacific coast points than at intermediate points. Here is what they said:

Eastern manufacturers and shippers also generally oppose the application. They contend that the relief sought is based on market competition rather than water competition and that such competition is not sufficient ground for fourth-section relief. They can see no justification for a basis of rates which will extend their natural advantage of proximity to economical water transportation to territory far inland and which will perhaps so seriously impair the earnings of the water lines as to result in the curtailment of service. Other eastern manufacturers are more particularly concerned with the disruption of the existing rate relationships which would be caused by the establishment of the proposed rates. It goes without saying that the water lines oppose the application. To the extent that the rail carriers would gain traffic, they would lose it. If, rather than see their business taken from them, they should reduce their port-to-port rates, the result would be a loss of revenue both to the water and to the all-rail lines. Neither would gain but both would lose. As above stated, carriers operating east of Chicago have not joined in the application, although urged to do so by the western lines.

#### Now listen to this:

The Boston & Maine and New York, New Haven & Hartford Railroads, New England carriers, actively oppose it.

Let me read just a little more now to show exactly who is interested in the matter and who is not. I am reading now from near the end of the decision. I am not going to read all of the decision, of course, but I want to read enough to show that this is not a local fight. I want to show that it affects every industry in every locality in the country.

Now let us see just exactly what the effect would be, in the opinion of the Interstate Commerce Commission, if the applications were granted for a departure from the fourth section allowing lower rates to the Pacific coast points than to intermediate points, rates so low as to divert a portion of the water transportation to the railroads. Here is the opinion of seven of the interstate commerce commissioners.

Mr. FESS. Will the Senator give us the page of the decision from which he is about to quote?

Mr. PITTMAN. I am going to read from page 438 of the decisions of the Interstate Commerce Commission, as follows:

There is another phase of this matter which must not be overlooked. Section 500 of the transportation act, 1920, declares the policy of Congress to be "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." The field of operations of the water lines is restricted to a comparatively narrow area along the Atlantic seaboard and to a much narrower area along the Pacific coast. Since but little traffic originates at the ports, the water lines much reach out for it into the interior. The inherent disadvantages of shipping by water prohibit them from competing with the rail lines at points where the combined rail and water charges equal the all-rail charges, and consequently the territory from which they may draw traffic is confined to an area from which the rail rates plus the water charges are substantially lower than the all-rail rates.

Their destination territory is confined almost exclusively to the Pacific coast cities. Unlike the rail carriers, they have no intermediate territory from which to draw or to which to deliver traffic. It is strongly urged, therefore, that to permit the western carriers to publish the proposed rates from Chicago for the avowed purpose of depriving the water lines of a substantial portion of such traffic as they are now able to obtain would be to disregard wholly the policy of Congress to promote, encourage, and develop water transportation. To be of material benefit to the rail carriers a substantial portion of this tonnage must be diverted to their lines. The declared policy of Congress is to foster and preserve in full vigor both rail and water transportation.

If the hopes of the applicants should be realized, the benefits which they as a whole might obtain from the granting of the application would be greatly disproportionate to the loss which the water lines would suffer. The record shows that the total tonnage, both east-bound and west-bound, of all the water lines is but a very small fraction of that of the transcontinental carriers operating west of Chicago. It is evident, therefore, that the diversion of any substantial tonnage from the water lines would have but an inappreciable effect on the net revenues of the rail carriers. On the other hand, it might very seriously impair the ability of the water lines to maintain their present standard of service.

Upon full consideration of the record we find that the application for authority to depart from the long-and-short-haul provision of the fourth section of the act should be denied.

The Interstate Commerce Commission in this opinion state that this is not alone a fight by the railroads for a part of the transportation through the Panama Canal; that this is a fight by the city of Chicago to take a part of the freight away from points east of Chicago.



At the present time steel and steel implements and parts are moving from Pittsburgh by rail to the city of Baltimore. From Baltimore they are carried to the Pacific coast through the Panama Canal by boat. The joint rates by which they are carried both by rail and water range from about 40 to 60 cents a ton; in one case, I believe, it was a little higher, being about 76 cents a ton. What is the result? Chicago wants that market. Chicago went before the Interstate Commerce Commission and said, "Here, we are meeting an unfair market condition; the water transportation through the Panama Canal is delivering all kinds of steel products from a few hundred miles east of us to 2,500 miles west of us, and we demand relief from that condition." That is all true enough; but what was the effect? Chicago was trying to change a natural condition by an artificial law; it was trying to take away from the Atlantic seaboard its natural position.

I have heard those on the other side of this question arguing all the time that we were trying to take away the advantages of some natural location. They have said:

The Middle West is not on the water and, of course, it has got to suffer.

But Chicago, the great city of the Middle West, goes before the Interstate Commerce Commission and says:

Pennsylvania and all of the Atlantic coast are taking away from us our natural territory to the west of us.

That is Chicago's idea of it, but the Interstate Commerce Commission says:

What right have we to take away the natural trade of Pittsburgh, the New England States, and the Atlantic seaboard and give it to Chicago?

Mr. Eastman comes out in his concurring but separate opinion and says never was it intended that there should be a departure from the fourth section on the ground of market competition. He says:

If you ever attempt to arrange markets through a departure from the fourth section as to the long-and-short-haul clause, you will have a criss-cross of rates in this country that will be totally incomprehensible.

Take, for instance, the Minnesota paper mills. They are located in the neighborhood from which Mr. Esch comes. Mr. Esch is interested in seeing the paper mills of Minnesota supply the Pacific coast with paper. It is now being supplied by the mills of Maine and the other New England States; they are supplying paper to the coast, but Minnesota says, "We are entitled to be put on a competitive basis with the New England paper mills, and to do that we have got to get a rate from the railroads that will make it cheaper to haul by rail 2,500 miles to the Pacific coast than it is to haul by water through the Panama Canal from the New England States." That is what they ask for; but when Minnesota is asking for a departure from the long-and-short-haul clause to the Pacific coast to defeat the mills of New England, why can not the mills of New England ask for a departure from the long-and-short-haul clause to St. Louis, which is now within the zone of operations of the Minnesota mills? New England can not furnish any paper in the middle zone; Minnesota has control of all that territory; but give the New England States a rate so low to St. Louis and intermediate points that it can compete with the rates from Minnesota, and the conditions will be equalized. In other words, Mr. Eastman is right, for whenever we start in to utilize the railroads of this country for the purpose of building up one place at the expense of another place we get back to the old rebate system, which was the cause of the fourth section. That is one ground.

Now in what are other railroads interested? The railroads are not interested in market conditions; Chicago is interested in them. Recollect that the applications filed with the Interstate Commerce Commission are applications from a zone north and south through Chicago to the Pacific coast. The State of the distinguished Senator from Ohio [Mr. Fess] is not included in the applications. His State would have been left high and dry if the applications had been granted. The territory just west of his State would have had preferential rates to the coast, but Ohio would not, and the traffic moving from Pittsburgh and that section of the country to the Atlantic coast would have been run out of business by a departure from the long-and-short-haul clause on traffic from Chicago to the Pacific coast.

Mr. FESS. Mr. President, will the Senator yield?

Mr. PITTMAN. Yes.

Mr. FESS. The applications applied only to that section west of Indiana. Ohio does not need it because we can ship from Ohio east and get the advantage of the rail-water route

from our section to the Atlantic coast and then around through the Panama Canal.

Mr. PITTMAN. Yes; that can be done so long as that traffic through the canal pays. It is being done now successfully. The condition is perfectly satisfactory to Ohio now; it is perfectly satisfactory to Pennsylvania now because the traffic exists, because the ships can run; but what is the very object of that for which the Senator was fighting? It was to destroy the very transportation for which Ohio is now asking.

Mr. FESS. Oh, no.

Mr. PITTMAN. The Senator says no.

Mr. FESS. Will the Senator yield further?

Mr. PITTMAN. Certainly.

Mr. FESS. The purpose is not to destroy water transportation. That is in violation of the policy of which the Senator read a moment ago and which I read in my opening address. The purpose is to keep the water transportation so that, with the inevitable increase of transportation, which doubles about every 13 years we will have both facilities instead of only one.

I should think that all the fears of the Senator would be removed by the decision of the Interstate Commerce Commission. I do not know the merits of the applications under the petitions which were filed, but I assume the Interstate Commerce Commission does know the merits, and the commission has decided in favor of the Senator's contention that they should not be granted, and my contention is that the commission is the body to do that and not the Congress of the United States.

Mr. PITTMAN. The Senator says that the object of it is not to destroy competition. It is not the object of the Interstate Commerce Commission to destroy competition. It is not the object of Congress to destroy it. I am speaking now, having gotten through with Chicago, of what the object of the railroads is. The Interstate Commerce Commission in this decision says that the railroads demand their share of the water traffic. Does that mean anything? The railroads were represented by Colonel Thom, who has represented all the railroad executives for years before the committee. He was perfectly frank when we asked him, "What is the object of these applications for the lower rate?" He said, "So that we can get our share of the traffic going through the Panama Canal." There is no doubt about that. We asked him, "What is your share?" He said, "Well, I do not know what our share is." "A half?" "Yes; probably a half will be our share."

Let me again show you what the president of the Northern Pacific has to say about it. He is one of the men whose views we have. Here is what he says. Just listen to this. Mr. Donnelly wrote a letter to Mr. BURNETT, of the House committee, in which he said:

It has never been suggested that the railroads, with the proposed higher rates, could take from the ships more than 50 per cent \* \* \*. If it is to be the policy of the Interstate Commerce Commission that the railroads shall be permitted to handle any and all traffic which will show some profit above the out-of-pocket cost, then the railroads can handle all the business that is now transported by steamships both east and west through the Panama Canal.

That is not only a frank statement, but it is a logical statement. Moving from Pittsburgh via Baltimore is 90 per cent of the whole traffic of that canal at the present time in steel and steel products. How on earth can you give a rate that will take half of that steel away from the Panama Canal without taking it all? Can you conceive how you are going to stop it? If you give me a rail rate that is more satisfactory than the water rate, so as to induce me to ship half of my product, am I not going to ship all of my product?

But you say it does not destroy water transportation. Do you think for one moment that there is any other intention in the minds of the railroad companies than to destroy it? Do you for one moment believe that they are looking for revenue in it? Can you think that? When you stop to think that the total tonnage of the western roads is over 500,000,000 tons, and the total tonnage through the Panama Canal is 5,000,000 tons, and, if they got half of that, it would be 2,500,000 tons, do you think it would amount to anything to those western roads?

Take the seven western roads that made this application: Those seven western roads have a tonnage of 270,000,000 tons. Do you think they are interested in getting 2,500,000 tons more? Is it a highly profitable 2,500,000 tons? Why, they ask to take it at out-of-pocket cost. Mr. Esch testified before our committee that they could not put the same rate in clear across the country, because if they did they would lose \$67,000,000 in putting it in from Chicago to the Pacific coast. He said they would even lose \$6,000,000 in revenue by simply putting in the out-of-pocket cost rate at the coast points. Do you think for one moment the railroads of this country are looking for that traffic? The railroads are not looking for the traffic, as Mr.



Thom indicated plainly when he said: "But it may grow larger." That is the proposition of the railroads in the matter; it may grow larger.

What would be the gross value of that tonnage to the western roads? The gross value of that tonnage—the gross, mind you—would not be \$15,000,000, as compared to \$860,000,000. Do you think they are fighting for that money? Is it not perfectly evident that it is exactly the same old fight that has been going on in this country since the very beginning of railroad-ing? Do men's minds have to go back so far that they do not remember what happened?

Why, all of us remember when the Ohio River and the Mississippi River, and the Missouri River were loaded down with steamboats. Where did they go? What happened to them? There started in a system of driving them off. How did they drive them off?

There were no restrictions on railroads at that time. Boats can not pick up local freight right along. There are certain points that they must meet and get it. At those competitive points the railroads made a murderous rate. They could carry the freight at any kind of a loss at that particular point, because they could make it up back behind that point. They did not have to do it long, did they? When a great railroad system that has land to go across, where the boats can not compete, can go after a boat where it can not get away from it, it takes it only a few months to put a steamboat out of business. They did put the boats out of business. They put them all out of business; and with all the improvements of our rivers that have been going on since my earliest recollection, where they have dredged away the sand bars and put in piles and have tried to make the water deeper on the Mississippi River, the boats have not come back.

Now, let me answer the Senator from Ohio. He says:

Why should you be afraid now? The Interstate Commerce Commission have decided with you. Why should you be afraid? They can be trusted.

I will tell you why we are afraid—because next year we might have seven men on that commission like the three who joined in this dissenting opinion. Look at the dissenting opinion of Commissioner Esch—as brutal and selfish a decision as a man ever wrote. He says, "We are appointed to look after the railroads, not after the boats." That is what he says. "We are to look after the railroads. We are looking after their welfare." It never occurred to him that he had the interests of the people of this country to look after.

Mr. FESS. Mr. President, will the Senator yield?

Mr. PITTMAN. Yes, sir.

Mr. FESS. The commissioner in that reference reminded the country that the Interstate Commerce Commission has no control over the Panama Canal, and has recommended that legislation be enacted to place it under its regulation, just the same as the railroads. Is the Senator in favor of that?

Mr. PITTMAN. I doubt very seriously if I am in favor of it.

Mr. FESS. I think it is a wise suggestion.

Mr. PITTMAN. I do not doubt it.

Now, we will go into what Mr. Esch did say.

Mr. SMOOT. Mr. President, will the Senator yield?

Mr. PITTMAN. I will.

Mr. SMOOT. If there is no objection to this decision that was rendered last Saturday, and if that is right, what objection is there now to having Congress say that that shall be the future policy, and not leave it for some other commission to say that that decision shall be reversed? Is not the business of this country of sufficient moment to let Congress say now that the policy shall be as the Interstate Commerce Commission has decided, and decided, as the Senator from Nevada says, by a vote of 7 to 3?

Mr. BRUCE. Mr. President, I remind the Senator from Utah that of course this decision was rendered simply with reference to the special circumstances of that particular case, which might be wholly different from the circumstances of another case presented to the commission.

Mr. SMOOT. The principle is the same.

Mr. BRUCE. Not at all. The commission said there, dealing with the particular circumstances before it, that those particular special circumstances were not such as to justify them in allowing lower coastal rates to the transcontinental lines. The commission was not undertaking to lay down any principle of general application for future cases.

Mr. FESS. Mr. President, will the Senator yield?

Mr. PITTMAN. I will after I get through answering one question at a time. The opinion of the commission does show that you have to get down to a principle in this matter.

As I was criticizing Mr. Esch I will read what he says:

We are charged with a duty respecting the revenues of the railroads by section 15a, but do not have any such responsibility regarding the shippers.

It has been the attitude of some members of the commission that they were put there for the purpose of being general managers of the railroads, to get business for them anyway, to make them pay. That has been the attitude. Now, just reverting for one moment to what was discussed by the Senator from Utah [Mr. Smoot] and the Senator from Maryland [Mr. Bruce] as to whether you have to get down to a principle, if you will read this decision you will find out that the rates that they asked at the coast points in competition with the boats were as high as they could have them and get any of the trade; and yet, on the other hand, they had to be so low and were so low that the Interstate Commerce Commission said that they lost more than they made. So, when you come down to it, while this is a particular case, it carries all of the elements of every case of that kind, or every case involving a departure from the fourth section on account of water competition.

What is it? The evidence in this case, the ruling in this case, the findings of the commission in this case, show that it is impossible to compete fairly with certain kinds of bulky, heavy traffic carried by water, and that if you give them a rate under the guise of competing, that is a rate that will lose for the railroads and destroy the water haul. That is what this whole decision shows, from the very beginning to the end of this decision.

Mr. FESS. Mr. President, will the Senator yield now?

Mr. PITTMAN. Just a second.

You ask, why should we be afraid of this long-and-short-haul principle? The commission has decided with us. I say to you that seven of the commissioners did decide with us; that three of them, without regard to whether it would pay the railroads or not, were undoubtedly determined to take half of that transportation away from the boats, were determined to give Chicago the market advantage that she demanded; and that change may take place at any time.

There is still another thing. Suppose they come again before the commission and it raises the rate a few cents. Is there anything to indicate that some of the seven who would not stand for this rate would not stand for a few cents higher? I want to read again from General Ashburn's testimony, and I wish all Senators had time to read what he said. He was put in charge of the Government barge line to experiment with it, to ascertain whether or not water transportation could be made to pay in this country. He has given the history of the decision that he made, and what does he say? That it was totally impossible to sell that barge line to a private individual; that it was totally impossible to induce a private person to go into the business, because no one is going to make an investment of ten or fifteen million dollars in boats when it is within the power of the Interstate Commerce Commission to place rates upon competitive points that will take half of the boats off the river. He could not afford to stand it.

In connection with this very proposition take the proposed Chicago ship canal to the Gulf. We asked their representative:

Why do you want a ship canal from Chicago to the Gulf?

So we can get on water and compete with the Atlantic seaboard on water.

Do you think water transportation is cheaper?

Of course, water transportation is cheaper. That is what we want. We want to take the freight down to New Orleans and around through the Panama Canal.

Then those representatives were asked by Senator SACKETT, of Kentucky:

What do you think would happen to the railroads if this went into effect? Would they lose some business?

Yes; they would lose some business.

Then what do you think the railroads would do?

Colonel Thom, representing the executives, said:

We would ask for the long-and-short haul from Chicago to New Orleans, so as to get our share of that business running from Chicago to New Orleans.

What does that mean? We say to the Interstate Commerce Commission, "We meant this as one of the special cases; we meant that it was your duty, under that pressure, to see that the railroads got half of the boat business." They want a ship canal from Minneapolis to Chicago. Yet the very moment a trade is built up there we know that an application will be made for a competitive rate.

Mr. FESS. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Ohio?

Mr. PITTMAN. I yield.



Mr. FESS. The Senator from Utah suggested that there ought to be a principle stated. The principle of the Government was read by the Senator from Nevada at the outset of his remarks. It is section 500 of the transportation act, which is to promote and foster both water and rail transportation, and the Senator now is discussing the merits of this petition covering 47 articles. That does not at all involve the merits of the bill now pending. It does not mean that seven of the Members who voted to deny the petition of the railroads would vote to take away from the commission the right to recognize the principle that at times, in certain cases, a lower rate for a long haul would be justifiable over a rate for a short haul. That is the point we are now discussing, whether this particular act of the commission should go to the extent of denying wholly the exercise of that principle. Nobody contends that. My contention is that this very decision is a proof that the commission is not under the pressure, but acts independently, in the light of the facts that are presented, and while I had supposed, without having gone into it, that there was justification for the granting of this petition, the facts as stated here are somewhat conclusive, and yet I recognize the strength of Mr. Esch's statement, that in certain cases the petition should have been granted. The Senator from Utah urges that there be a principle recognized, and my contention is that we have that principle, and it is a matter of law. The particular case being tried on the Senate floor, involving these 47 items of the petition, does not go at all to the essence of the pending bill, which we are now discussing.

Mr. SMOOT. Mr. President, will the Senator yield?

Mr. PITTMAN. I yield.

Mr. SMOOT. I would like to submit a question to the Senator from Ohio. If he and his associates desired to begin business in some section of the country tributary to the ocean, without water transportation, would he like to make an investment and build up an industry, or an industrial center, knowing that at some time the question might arise as to whether his business was to be destroyed by a rate fixed by the Interstate Commerce Commission?

Mr. FESS. No; and I know that it would not be destroyed, as long as we have a Government agency the policy of which is not to destroy.

Mr. SMOOT. I say to the Senator now that if the applications that have been made and will be made were supported by the Interstate Commerce Commission, as they have been in the past, the Senator's industrial center would be destroyed.

Mr. FESS. We are developing water transportation right along, and will develop it in the next 20 years vastly more than we have in the last 20 years.

Mr. SMOOT. I can not see any harm whatever in having Congress declare a principle, the principle being that there shall be no greater charge for a shorter haul than for a longer haul.

Mr. FESS. That would be against public policy, it seems to me.

Mr. SMOOT. That is what the Senator said the other day. All we are asking for is to have Congress say that that shall be the principle of our shipping industries in the future. If it is not done, no man will be safe in trying to start an industry in a territory that has no water competition, because he will not know how soon rates will be made against him which will put him out of business, and the Government of the United States never ought to sanction any such principle.

Mr. FESS. As long as the business is not here to satisfy the requirements of the operation by both rail and water, we can not artificially build it up. It must depend upon having the business here, and the Senator knows, because there is no man on the floor who has a broader comprehension than he, that with the growth of business within the last 20 years, increased as it will be in the next 20 years, we will develop water transportation, and we must not develop it at the expense of rail transportation. We must maintain both of them. The Government can not grow except by maintaining both of them.

Mr. SMOOT. The statement I made, which the Senator undertook to refute, had reference to what my own experience has shown in the past, and I can not see why under a decision of the Interstate Commerce Commission those conditions may not exist again. I say to the Senator that when I went into business, I know it was only a short time, with the rates against me on material coming in and going out, when I could not have met the competition, and the only reason why we were ever successful was because of the fact that we made a class of goods that no other concern in the United States made. What I want to see accomplished is this: I want the power taken from the Interstate Commerce Commission, or any other agency of the Government, to say, "I

will build up this section of the country, I will destroy this section, by making rates that will do it." That is very easily done.

Mr. FESS. If the Senator from Nevada will permit me to say so to the Senator from Utah, if this pending measure becomes a law, in my judgment the Senator from Utah will be one of the most disappointed of men 10 years from now, and will regret that he ever gave his support to such a proposal as this.

Mr. SMOOT. I will freely acknowledge it if such is the case; but I am just as positive as the Senator from Ohio can possibly be that the result will be otherwise.

Mr. FESS. It is interesting to me to note how the Senators from the intermountain country, where they do not see a river, could be much more interested in water transportation than those of us who live on rivers.

Mr. SMOOT. We have suffered.

Mr. PITTMAN. I have a very happy feeling when I find the Senator from Ohio so deeply interested in the intermountain country.

Mr. GOODING. Mr. President, will the Senator yield just a moment?

Mr. PITTMAN. I yield.

Mr. GOODING. I merely want to inform the Senator from Ohio that he evidently knows as much about the West as he does about the bill we are discussing, because the Columbia, with its tributaries, is the second largest river in the United States. We have rivers out there.

Mr. FESS. And the people who live on the Columbia are against this bill.

Mr. GOODING. The Senator is mistaken.

Mr. WHEELER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Montana?

Mr. PITTMAN. I yield.

Mr. WHEELER. The other day when one of the Senators was speaking somebody said he desired to call a witness. I desire to call the attention of the Senator from Ohio to a witness who appeared at one of the hearings. This was the Hon. O. P. Gothlin, formerly chairman of the Public Service Commission of Ohio, and formerly president of the National Association of Railway Commissioners, and at the time he was testifying he was the chief of the tariff bureau of the Public Service Commission of the State of Indiana. He stated as follows:

Many years ago, when the great State of Ohio embraced within its borders but a fraction of its present population, it exhibited a most remarkable spirit of enterprise by constructing a magnificent system of canals. When railroad transportation came into the field farseeing statesmen enacted a long-and-short-haul law for the very purpose of protecting the waterways, constructed at so great an expense. But the law was never enforced and canal transportation was killed. Had the Ohio long-and-short haul been properly observed, Ohio would now have an effective transportation system independent of and supplemental to the rail service, that has not been able to keep up with the demands of commerce. As a result of the failure to enforce the law the once magnificent system of canals has decayed into a condition of innocuous desuetude.

Mr. FESS. It is an interesting bit of information that the canal system of Ohio, which was built before the railroads were built, has been discontinued because of the long-and-short-haul idea. That is a new one.

Mr. PITTMAN. Mr. President, I want to get back again to the proposition of the principle involved in this matter. The Senator from Ohio does not think there is enough traffic for both rail and water. Yet it will be found that the Government barge line, according to the testimony of General Ashburn, has been increasing its business in conjunction with the railroads. Let me read this to the Senate:

Senator WHEELER. If you could operate up there it would mean that there would be a tremendous lot of grain from the Northwest that would be shipped down the Mississippi River, would it not?

Brigadier General ASHBURN. Why, yes. If you will pardon this digression—I think perhaps you have gotten interested in it—the reason we put in this 2 mills per ton-mile rate on grain from St. Louis and Cairo down was this: There wasn't any grain flowing through St. Louis; all this grain was going through Montreal. It did not make any difference where it came from, no American port was profiting by it at all. So we figured out what the rate was, the joint rail-water rate, the joint rail-and-lake rate, and we finally came to the conclusion that if we put in a rate of 2 mills a ton-mile we could get it to flow our way, and it did and it is still flowing our way. That is the only reason we put it in. It was doubtful at the time whether it would be a reasonable rate or not.

Senator WHEELER. But it is a reasonable rate.

Senator COUZENS. And you make a profit at that rate?



Brigadier General ASHBURN. Yes; it is one of the best paying things we handle.

Now let us go further over in the hearings to see what they are doing in conjunction with the railroads:

Brigadier General ASHBURN. Yes, we can operate on a 4½-foot channel quite feasibly and make money.

Now the tonnage carried. I am going to just roughly give you these figures in round numbers to show you how the tonnage has increased.

In 1918 it was 33,000 tons; in 1919, 235,000 tons; in 1920, 360,000 tons; in 1921, 672,000 tons; in 1922, 860,000 tons; in 1923, 979,000 tons; in 1924, 1,071,000 tons; and in the first 10 months of 1925 it was approximately 1,000,000 tons.

Now, that has increased in seven years from 33,000 tons to over 1,200,000 tons a year.

Now, here is another thing that will astonish you. When we started, the proportion between the all-water tonnage, carried all by water, and that carried joint water-rail was as follows:

The all-water the first year was 25,000 tons; the joint rail-water was 8,728 tons.

The next year, 1919, it was 175,000 tons all-water and 60,000 tons joint rail-water.

The next year, 1920, it was 192,000 tons all-water and 168,000 tons rail-water.

The next year, 1921, it was 348,000 tons all-water and 323,000 tons joint water-rail.

Until to-day in the 10 months of 1925, 315,000 tons is all-water and 678,725 tons is joint rail-water.

In other words, the astonishing thing has arisen that by working with these railroads the all-water had dropped to a certain extent, but the water-rail has increased tremendously.

Senator WHEELER. In other words, it has been a benefit to the railroads?

Brigadier General Ashburn. Yes; it has been a benefit to the railroads.

Now, another astonishing thing about it. There was scarcely any upstream traffic at all when we started, scarcely any. To-day the upstream traffic on both the Warrior River and on the Mississippi River is greater than the downstream traffic on either one of them. In other words, our imports by means of these rivers are greater.

Now, what happens there? Take this tonnage of joint water-rail. That jumped from 8,728 tons to 678,000 tons. That came in there, and it never came in that way before. It came in because of this cheap water rate. And where did we distribute it? We put it at Vicksburg, Cairo, St. Louis, but it goes to 39 States, and everything we bring in that way helps the railroads.

General Ashburn testified that there was no competition between water and rail; that is, that there was no logical competition between water and rail; that water and rail of necessity had to cooperate. They have to reach out with their feeders, which are the rails, to bring the water to them. This immense quantity of grain was moving through Montreal and he reached out with a joint rate with the railroads and brought it down to St. Louis and on down the Mississippi River. He now is willing to reach up to Chicago and join with the railroads that come in there with their products and take it down the water route.

It seems to be lacking in vision to say that the cheapest transportation on earth is not ready for use. There is no one who for one moment could doubt that water transportation is the cheapest in the world. We have seen it too long. Here in our country, where we have the greatest natural arteries of transportation in all the world, we are practically the only people who do not utilize them. We do not utilize them because we have some very fictitious theories about the matter. Some seem to have the idea that it is the duty of the Interstate Commerce Commission to the railroads to take the Pacific coast market away from Pittsburgh and give it to Chicago. They say, "We are closer to the Pacific coast than Pittsburgh. Why should you let Pittsburgh ship all its steel products to Baltimore and through the canal, and cut us out of that territory in Chicago?" The Interstate Commerce Commission said, "How can we help you? They have the natural advantage of water." "Ah, but," they say, "you must remember that provision of the fourth section that in special cases—remember, in special cases—you can make the rate lower at the more distant point than at the intermediate point."

Mr. NORRIS. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER (Mr. PINE in the chair). Does the Senator from Nevada yield to the Senator from Nebraska?

Mr. PITTMAN. I yield.

Mr. NORRIS. I would be interested if the Senator would give a little more in detail a description of the case that he has been discussing. To what articles and to what territory

did it apply particularly? While I am asking if the Senator will not do that, let me ask, too, if the application by these seven railroads had been sustained, would it have been possible then under such a ruling for the railroads running out of Chicago to have charged a higher rate to the Pacific coast on any given article of commerce than they would have charged from Chicago to some intermediate point like Denver, Omaha, or a place of that kind?

Mr. PITTMAN. To have charged a higher rate?

Mr. NORRIS. A higher rate for the shorter haul, it being a part of the long haul. Would that have been the result?

Mr. PITTMAN. I will give exactly what would be the result so the Senator may understand it. Here is what would have been the result. In the appendix is a list of the 47 articles with reference to which they ask for relief from the fourth section. I shall not read them all, but I will call attention to one or two to give the difference to show what would happen. The rate, for instance, on ammunition to the middle part of the Senator's State of Nebraska would be \$1.40 per hundred pounds. The rate to San Francisco would have been \$1.10 per hundred pounds.

Mr. NORRIS. Suppose the Senator applies it to steel products?

Mr. PITTMAN. All right, we will take steel products. On iron and steel articles the rate to the Senator's State would be \$1.58 a hundred and to San Francisco would be \$1.10 a hundred, and so on down the list. That is the situation. In other words, the first figures are the existing flat rates across the country. They do not disturb that flat rate. They leave the rate the same.

Mr. NORRIS. For the intermediate point?

Mr. PITTMAN. Except at the competitive points on the Pacific coast. There they reduce the rate. It has been admitted that if they reduced it, we will say, on steel products \$1.10 a hundred clear across the country, it would be called confiscatory because it would bankrupt the railroad. Here is the idea about it. The rail carriers can afford to take any loss on those 47 articles at the point of contest just for the purpose of putting the boats out of business. It would be worth it to them. Suppose it does cost a few million dollars?

Mr. NORRIS. Let me ask the Senator another question just at that point. Was it admitted in that case that the rates from Chicago to the Pacific coast would have been carried into effect at a loss to the railroads?

Mr. PITTMAN. It was. I read that from the opinion.

Mr. NORRIS. If the railroads made money, then, they had to make it up on the intermediate points.

Mr. FESS. Mr. President, will the Senator yield?

Mr. PITTMAN. Certainly.

Mr. FESS. The Senator made an error. He said the rate was \$1.58 on steel. That applied to dry goods instead of steel.

Mr. NORRIS. I would be just as well satisfied to have it on dry goods, but let us have it now on steel.

Mr. PITTMAN. On steel it is \$1 to the Senator's State of Nebraska and 80 cents to the coast. In other words, it is about the same proportion and on some articles a little more.

Mr. REED of Pennsylvania. Was it admitted that the cost of carrying the steel to California was more than 80 cents?

Mr. PITTMAN. Does the Senator mean by rail?

Mr. REED of Pennsylvania. Yes.

Mr. PITTMAN. It was admitted.

Mr. REED of Pennsylvania. That admission was made in the case?

Mr. PITTMAN. I have it right here. In the opinion they made this statement:

The computation of these costs has necessarily required numerous assumptions not susceptible of accurate determination. For illustration, it has been assumed that two-thirds of the cost of maintaining the fixed property is due to the action of the elements and but one-third to the movement of traffic, and similarly that one-fifth of the cost of maintaining equipment arises from weather conditions and four-fifths from traffic. Other assumptions have been made in determining the extent to which the various transportation accounts would be affected by added traffic. It can not be said with confidence that figures computed in this manner approximate the cost of the service. The same method as applied in the former case gave quite different results. These figures, however, are not seriously disputed by other parties to the record and may be accepted as indicating that the rates proposed would pay something over and above the out-of-pocket cost. This is further indicated by comparison with certain export rates now in effect from Chicago to Pacific coast terminals. Among other rates which might be cited are rates of 40 cents, minimum 80,000 pounds, on iron and steel articles; 63 cents, minimum 60,000 pounds, on cast-iron pipe; 76 cents, minimum 50,000 pounds, on castings; and 80 cents, minimum 40,000 pounds, on paint.



If the applicants are to benefit through the establishment of the rates here sought to be made effective they must necessarily first offset the losses which would result on the traffic now moving all rail. They estimate that if the proposed rates had been in effect during the months of May, June, July, and August, 1923, the loss of revenue on iron and steel articles would have been \$207,531, on articles of paper \$38,285, and on all other commodities listed in the application \$41,335, a total loss of revenue in four months of \$287,151, or, assuming the same relative volume of tonnage, \$861,453 during the year. It would have required about 69,500 additional tons of iron and steel, 12,000 tons of paper, and 11,500 tons of all other commodities to equalize this loss.

If the hopes of the western lines should be realized, a substantial volume of traffic would be diverted from interior eastern points of origin to Chicago territory. The eastern lines would then be deprived of the revenue which they now derive from the movement of such traffic to the Atlantic ports. No estimate of this loss appears in the record. With an all-rail movement from Chicago of 300,000 tons of iron and steel per year and a gain of 50 per cent because of the reduction in the rail rates the eastern lines would lose the revenue on 150,000 tons. If this tonnage should be lost to the Pittsburgh district, the eastern lines would lose in the neighborhood of \$1,000,000. At 40 cents per 100 pounds, the loss to the water lines would exceed \$1,000,000.

Mr. REED of Pennsylvania. I understand that by "loss" they referred to a reduction in revenue, but that it does not mean that the cost of the service exceeds the rate charged. Can the Senator tell me what the proposed rate was per 100 pounds on steel from Chicago to San Francisco?

Mr. PITTMAN. It was 80 cents per hundred, and the port-to-port rate is 40 cents from Pittsburgh.

Mr. FESS. Mr. President, will the Senator yield to me again?

Mr. PITTMAN. Certainly.

Mr. FESS. I am of the opinion that the answer given by the Senator from Nevada is not in accordance with the question propounded by the Senator from Pennsylvania.

Mr. REED of Pennsylvania. I did not understand that he gave any information on the point about which I inquired.

Mr. FESS. The Senator from Pennsylvania wanted to know whether the 80-cent rate would be at an actual loss?

Mr. REED of Pennsylvania. Yes.

Mr. FESS. It would not.

Mr. REED of Pennsylvania. That is what I was curious to know.

Mr. COUZENS. But the Senator does not know that.

Mr. REED of Pennsylvania. Does the Senator know that the operating cost for carrying 100 pounds of steel from Chicago to San Francisco is less than the 80-cent rate charged by the railway?

Mr. FESS. I have no definite information. It is not given in the report that we have.

Mr. REED of Pennsylvania. If 80 cents does not cover the cost of carriage from Chicago to San Francisco, then manifestly, from the standpoint of cost of service, is not the intermediate rate much too high?

Mr. FESS. It might be. The issue here is that they will not permit a rate from Chicago to San Francisco which merely covers the out-of-pocket cost. It has to be competitive.

Mr. REED of Pennsylvania. Very well, then; that is, the intermediate haul must be far more than compensatory, must it not?

Mr. FESS. No, it must be reasonably compensatory; it is not fully compensatory. There may be a normal rate to the intermediate point, but the coast rate, would be a point just above the actual cost so that there would be some compensation, and a part of the profit would go to pay the expenses. There is a difference between fully compensatory, which is the intermediate cost, and reasonably compensatory, which is the coast cost.

Mr. REED of Pennsylvania. Then, you apply two wholly different standards to the different regions?

Mr. KING. Three different standards.

Mr. REED of Pennsylvania. The coast standard, with the cheaper water rate, is the competitive standard.

I am not impressed with the efforts to keep alive uneconomic means of carriage. It seems to me that the proposition which we are asked here to approve in voting against this bill would be the same as if we were asked to authorize a trolley to charge a fare at bare operating cost in order to compete with a bus line and then make it up in some other direction where there was not a bus line competing.

Mr. PITTMAN. That is the exact theory, of course.

Mr. KING. Exactly.

Mr. FESS. Mr. President—

Mr. PITTMAN. Wait a moment, please. Here is the proposition: It was testified that if the railroads charged the same rates to intermediate points in crossing the country from Chicago to the Pacific coast that they ask to be permitted to charge to the coast, it would bankrupt the railroads.

Mr. REED of Pennsylvania. That obviously, then, is an answer to the question whether the rate to coast points pays for the cost of the service.

Mr. PITTMAN. There is not any doubt that it does not pay. What the railroads have been trying to figure out is a rate that will give them half the business of the Panama Canal. Now, we start with that proposition. That is what the railroads want.

Mr. REED of Pennsylvania. I fail to see why they should have it if it is not economically sound.

Mr. PITTMAN. In the first place, it would not be economy for them to take half of the Panama Canal business even if they could get half of it, for this reason: It would only amount to about 1 per cent of their total traffic; and if they should get half it, which would be one-half of 1 per cent of their total traffic, at what they call "out-of-pocket" cost—that is something which they try to estimate—they do not lose anything by handling, so to speak—

Mr. REED of Pennsylvania. I realize the difficulty of making an estimate, of course.

Mr. PITTMAN. They can not get at it, and the Interstate Commerce Commission have never said that they could get at it. As far as they go with regard to the 80-cent rate, as I read their opinion, is that in their computations the railroads have not shown to the Interstate Commerce Commission that they will make more than they lose by the transaction. That is the first point. Then they go a little further and say that they are certain of one thing, that if the railroads do get the traffic—that is, half of the Panama Canal traffic through that rate—it certainly will not benefit them much. It is so negligible that they will not see it, but it will injure tremendously the shipping through the Panama Canal by taking half of it. They argue in that way.

The other phase of the case is the market competition. The zone where the railroads are to get these departures runs west of Indiana, taking in Chicago. It does not extend east of Chicago. It is in that zone that they ask for the departure. So if the railroads get half of the business of the Panama Canal they have got to take it away from the East.

Ninety per cent of the freight going through the Panama Canal now is composed of steel products. If the railroads are successful in securing this low rate, then half of that steel traffic and half of the tonnage has got to be diverted from the canal. What do they make by it? Mr. Eastman, in concurring in the opinion, expressly states that in his opinion it never was the intention of that proviso wherein it is stated that in certain special cases the commission might grant a departure from the fourth section to deal with market competition.

He gives illustrations of what would happen if that should be done. If they should try to give a special rate to Chicago to take the traffic from Pittsburgh, and then give Pittsburgh a special rate to St. Louis to take it away from Chicago, the country would be criss-crossed with special rates and we would be back to the old days before 1887 when we had so much trouble over rebates. As a matter of fact, if you take the history of the transportation act of 1887, what do you find? You find that in 1887 boats were practically run off the rivers. That is the history of the fourth section. Up until that time the rivers were crowded with boats. The railroads ran them off in many ways. They put on opposition boats and put the rates down so low in certain cases that those who ran the boats had to quit. Then the railroads paralleled the boat lines. After the railroads had run the boats off, then at competitive points like St. Louis and Vicksburg and New Orleans and other cities they put in a murderous rate. It did not make anything for them, but they had much other territory on which to live in the meantime where they could raise the rates, and they did raise them. They made the back country support the fight which they were making on water transportation.

What happened? Senators know well enough that the debates in Congress show that people came before Congress and said that there must be some control over railroads in this country; that the people were interested in cheap transportation and were not interested in railroads or in boat lines, either one.

Wherever a commodity by its very nature is heavy and bulky and where time is not material, where six months does not make any difference, everyone knows that it can be carried by water for one-third of the cost for which it can be carried



by rail; but the very minute that the railroads had killed off that cheap transportation the rates went up again, of course.

Take the conditions as affecting San Francisco prior to 1918.

The railroads were allowed departures from the long-and-short-haul clause on nearly everything to San Francisco in 1918. When the World War came on and shipping all went to the Atlantic, what happened then? The railroads made an application for a change of rates; the commission canceled the long-and-short-haul order, and the railroads raised the rates to San Francisco as they are now, but they put the rates down when the Panama Canal opened, and the very minute the ships went off the Panama Canal they put the rates up again. That is the history of it. Now, take the fourth section, if you please.

Mr. REED of Pennsylvania. Mr. President, may I interject a remark at that point?

Mr. PITTMAN. Yes, sir.

Mr. REED of Pennsylvania. I should like the Senator to give me his views on this proposition. I have not heard much of this debate, but it seems to me that not only in this case but in most of the other functioning of the Interstate Commission they have been struggling against geography.

Mr. PITTMAN. Exactly.

Mr. REED of Pennsylvania. There are certain regions of this country that have an advantage because of their geographic location. The moment the Interstate Commerce Commission, or any other regulatory body, tries to overcome natural advantages by giving artificial advantages, it seems to me, they are building up a false structure, which is bound to work injustice.

Mr. PITTMAN. I think there is a limit—

Mr. REED of Pennsylvania. I am very much interested, of course, in the steel from Pittsburgh, but I do not believe that we ought to deal with questions of this kind on local lines. That would lead to a process of logrolling that would not work out a just result. We have got to look at it from the standpoint of the whole United States. I confess I can not see why because a certain point has a geographic advantage the Interstate Commerce Commission should so distort the rate structure as to give a similar artificial advantage to some other more distant point. Is not that part of the same philosophy that underlies these unnatural rates to the Pacific coast?

Mr. PITTMAN. It is the same philosophy. Whether you put it on the ground of market competition between two different points such as Chicago and Pittsburgh, or whether you put it on the ground that the railroads say they are entitled to their share of the water business, or whether you put it on the old ground of rebate is immaterial; the proposition is that instead of using our transportation facilities for the purpose of moving our products to market in the cheapest possible way, we are constantly disturbing ourselves to see whether this town or that town is getting the best of it or the worst of it or whether the railroads are getting the worst of it or water transportation is getting the worst of it.

It is admitted that, so far as efficiency is concerned, water transportation is inferior to rail transportation; it is admitted that there are only a comparatively few things that do move by water. They have got to be low-priced, bulky articles, concerning the movement of which time is not an element; otherwise the rails will carry them. Not only that, but here is the idea: There is not anything on earth that we carry through the Panama Canal to the Pacific coast, some part of which is not in turn distributed by the railroads to the back country.

Mr. REED of Pennsylvania. In other words, the water haul is a feeder to the railroads?

Mr. PITTMAN. It is bound to be a feeder to the railroads. The very minute that a cargo of steel or farm implements is unloaded at San Francisco it starts to move out to the farmer; whether it moves 10 miles or a hundred miles or 300 miles, it does not stay in San Francisco very long. The rails are bound to do that hauling. The steel that was sent through the Panama Canal assisted in building the great city of Los Angeles, which has doubled in population, probably, in the last three or four years. The rail lines carried hundreds and hundreds and thousands of people out to that section; the boat lines carried probably three articles out there, the main one being steel, and the railroads carried practically everything else that went into the building of that great city.

Mr. REED of Pennsylvania. Mr. President, to take an extravagant illustration, the Senator might look at the water commerce of the Great Lakes. The cheapest transportation in the world, I suppose, is the movement of ore from Lake Superior ports down to the lower lake ports. The rate of the water haul is just one-ninth what it would be if that ore were moved by rail from Minnesota to Pennsylvania. Yet, if the opponents of this bill have shown me their thought correctly,

they would favor allowing the railroads to reduce their rates to one-ninth of their present level and undertake the uneconomic process of bringing ore from Minnesota to Pennsylvania by rail. I think that would be unmixed misfortune for the railroads, for the water carriers, and for the public generally. I think that is an exaggerated illustration of the point that is at issue here, but it is an illustration.

Mr. PITTMAN. It is somewhat exaggerated, perhaps, but it is a good illustration.

Mr. GOODING. Mr. President, I want to say to the Senator from Pennsylvania that in the East there have been no material violations of the fourth section. The East is so strong politically that there never have been any violations there to amount to anything. That is all we are fighting for in the West, namely, just what the Government is giving to the people east of Chicago where water transportation has been permitted to develop. The great State of Pennsylvania has protected the Monongahela River, and everyone ought to be proud of the transportation on and the use made of the Monongahela River. Twenty-six million tons of freight are carried upon it. It has been a great blessing to the Pennsylvania Railroad itself; it has not injured that road at all; it has developed and brought into existence the great steel industry at Pittsburgh, by which all the people of America have been benefited. We in the West are asking for the same privilege; that is all; nothing more. We do not want any special advantages; we merely want the same consideration that the Government has been giving to the people east of Chicago, where violations of the fourth section of the interstate commerce act to destroy water transportation have never in the history of the country been permitted at any time.

Mr. PITTMAN. Just listen to this interesting proposition on the Warrior River. I have already read from Brigadier General Ashburn's statement that he has increased the tonnage from 7,000 tons of joint traffic with railroads to six hundred and some odd thousand tons of joint traffic; that he has reached out and taken this grain from the Northwest that used to go through Montreal; but, just to call to your minds what can be done by water transportation with certain kinds of articles, let me read this statement of General Ashburn's:

Bulky materials on the Mississippi and Warrior are usually carried by fleets pushed by a towboat. On the Mississippi River one large twinscrew tunnel-type towboat, 2,000 horsepower, will carry 16,000 tons downstream from St. Louis to New Orleans, 1,200 miles, at about 150 miles a day. The channel available is 300 feet wide by 9 feet deep, most of the way. Upstream the same type of towboat carries 9,000 tons at 75 miles per day.

Picture that to yourself a moment. Sixteen thousand tons in one tow. That is 640 carloads of 25 tons each, which is the average. Or 8 trainloads of 80 cars each, all going down at one time. That cargo—suppose it were all grain—that cargo of 16,000 tons can be delivered from St. Louis to New Orleans quicker than it can be delivered by train.

Mr. REED of Pennsylvania. Mr. President, the Senator has spoken quite a little about the use of the Mississippi and the barge line. I think it is only correct to call attention to the fact that with the completion of the improvement of the Ohio, which will happen, I hope, within the next three or four years, traffic on the Mississippi River will be increased many times over what it is to-day—many times. The traffic is just awaiting completion of the last links in the 50-lock ladder that runs down the Ohio River. When that is finished, the traffic, both down river and upriver, will surprise, I am sure, most of the people who learn of it.

Mr. PITTMAN. Mr. President, there will be two kinds of boats that will move on that route. There will be the Government boat, like the present barge line, and there will be the company boat that hauls its own products.

Mr. REED of Pennsylvania. There will be many privately operated carriers, too.

Mr. PITTMAN. There will not be for this reason: As General Ashburn testifies, to-day he could not sell this line. He can not get any private individuals to go into the business to-day, although this big barge line is paying. Why? Because, as was testified the other day by Mr. Thom, the attorney for the railroad executives, who represents them before the committee, of course, when the ship barge line went in from Chicago to the Gulf they would demand their part of the traffic that was established. They would ask for a special rate to St. Louis and New Orleans and Vicksburg, and they would expect it to be granted, and we always are expecting it to be granted; but whether we expect it or not, we fear it is so, and no one could afford to put \$10,000,000 in a great barge line for general traffic and then have a rate put in by competing lines



under this proviso that would take away even half of your business.

The railroads say they do not want to destroy the traffic through the Panama Canal; that they just want half of it; and that will not hurt it much. Somebody is going to be destroyed, however. I do not know who it will be, but somebody's ship goes down and out when you take half the traffic off of the canal. What we are fighting for here is the fundamental principle that has already been touched upon, that we must recognize that nature is some factor in transportation. We must understand that water transportation is the cheapest transportation in the world for those things that are adapted for water transportation, and that rail transportation can not possibly be injured by water transportation beyond the points to which that water transportation can carry it. There is no fear of destruction or injury hanging over a railroad for two reasons: It runs in territories where boats can not go, and it can carry thousands of different kinds of freight that nobody would ship by a boat because it is too slow and too uncertain. Railroads can pick up their freight anywhere. Boats can only pick it up at certain landings. There is nothing wrong with the railroads.

Going back to the proposition involved here, the fourth section was passed in 1887, and it was made the direct law that a railroad should not charge more for a short haul than for a longer haul going in the same direction over the same system. Why was it? It was to stop the discriminations that had been going on in all kinds of transportation in this country. There is a leeway left there, is there not? There is a limit. It is not a hard-and-fast rule. Why? Because the Interstate Commerce Commission is permitted to authorize a railroad to charge just as much to haul from Chicago to Ogden as from Chicago to San Francisco. Is not that quite a leeway? They will let them charge Ogden twice as much for the same service; in other words, they will give twice the service to San Francisco that they will give to the intermediate point at Ogden for the same price. Is not that a leeway? That is all the leeway on earth that ever should be needed by anybody.

Mind you, as the Senator brought up a while ago, if a dollar is what they say is a reasonable rate to Denver, Colo., half way to the coast, then a dollar is itself getting to be a pretty low rate when you get twice the distance from the coast. If that is not true, then the dollar at Denver is too high to earn its proportion of the 5¼ per cent we intend the railroads to earn. We intend that the railroads of this country shall earn 5¼ per cent; and if the dollar at Denver will earn the railroads 5¼ per cent, and that is all it will earn them, then the rate of a dollar down there at San Francisco is below cost, and everyone knows it is below cost.

Mr. FESS. Mr. President, if the Senator will yield, I should like to correct a statement made by the Senator from Idaho [Mr. Gooding] when he said that we did not apply the long-and-short-haul principle to the East, but it is limited to the West.

Mr. PITTMAN. Oh, he did not say in any case.

Mr. FESS. Yes; he did.

Mr. GOODING. Yes; I said there were very few violations in the East. I made that statement.

Mr. REED of Pennsylvania. Mr. President, we do not desire to take the time of the Senate, but we could give you a catalogue of a thousand discriminations in the East. Let me tell the Senator one.

Mr. GOODING. Wait a minute, until you understand me. There are violations, of course, on some circuitous roads, but I said to meet water transportation. You have hundreds and thousands of them on circuitous roads. You have a few on coal. That is all you have.

Mr. REED of Pennsylvania. Will not the Senator let me answer that statement? Just take this illustration:

A ton of tin is worth about \$1,200. A ton of steel is worth about \$40. You can send a ton of tin from New York to Pittsburgh cheaper than you can send a ton of steel over the same rails from Pittsburgh to New York. How do you justify such a thing as that?

Mr. GOODING. I do not justify it, but that is not a violation of the fourth section. That is not charging more for a shorter haul than for a long haul on the same class of freight moving over the same road in the same direction.

Mr. REED of Pennsylvania. It is a violation of common fairness that the fourth section was intended to express.

Mr. GOODING. The whole administration of the railroads is full of it all the time. As the Senator knows, they are fighting all the time for preferential rates.

Mr. FESS. Mr. President, if the Senator from Nevada will permit me, I should like to ask the Senator from Pennsylvania a question in the form of a statement.

Mr. PITTMAN. Certainly.

Mr. FESS. Coal can be shipped from Virginia and West Virginia through Hampton Roads over a rail route reaching Hampton Roads and then on by water route to Boston at \$4.22 a long ton. Coal shipped from Clearfield, not on the water, clear to Boston over a rail route, would cost \$4.85 normally. In order to get some traffic out of the Clearfield mines into Boston over that route they would have to lower the rate. They have lowered it to \$4.22 to meet this competition, but they have not lowered it on points 80 miles inland. They kept that at \$4.75. My question is, What injury is there to anybody to allow the Clearfield mines to compete over the rail route to Boston; and what benefit would it be to anyone to deny that?

Mr. REED of Pennsylvania. The Senator knows that within a few months the rates between those coal fields and Boston have been revised, to the great disadvantage of Clearfield, and that at the present time Clearfield is unable to ship any coal east of Springfield, Mass. They have been utterly run out of the Boston market by the discriminatory action of the Interstate Commerce Commission.

Mr. FESS. East of Springfield?

Mr. REED of Pennsylvania. East of Springfield they are barred from the market. The only place they can ship is west of Springfield.

Mr. FESS. Does that mean that the rate is too low?

Mr. REED of Pennsylvania. It means that the rate is too high. The rates have been reduced on all-rail coal from lower West Virginia to Boston, so that without shipping by way of water at all they have run the Pennsylvania mines out of business.

Let me give you an illustration of just what I meant. You are talking about shipments over the same rails. The greatest coking region in the world is the Connellsville region of Pennsylvania. It makes the most perfect metallurgical coke that could be asked. A competitive field has sprung up in West Virginia. It is 20 miles farther from that West Virginia field to Philadelphia than it is from Connellsville, and yet such is the wisdom of the Interstate Commerce Commission that the West Virginia mines and coke ovens can ship their coke 20 miles farther at 20 cents per ton less.

In Pennsylvania we pay a union scale. They do not pay so much in West Virginia. Not only do they ship their coke farther for less money than we do, but they have the initial advantage of labor less well paid. What chance have we? And the Interstate Commerce Commission ask us to perpetuate the discretion that they abuse as shockingly as that!

Mr. BRUCE. Mr. President—

Mr. REED of Pennsylvania. I could go on and give you 50 illustrations of the same purport.

Mr. FESS. But what I am concerned about is that that is violating the very thing we are trying to do here, namely, make competitive rates. The Senator says that they ship a longer distance in a competitive market at a lower rate, and thus make it impossible for the other people to ship. Our point is that we ought to permit the lower rate for the longer haul where it is in a competitive market where a less rate through the entire transportation line is being charged.

Mr. REED of Pennsylvania. I say that a railroad has no business carrying bulk freight from the eastern part of the United States to San Francisco, because it is an uneconomic thing for it to do. The trouble with this proposition that the Senator from Ohio is advancing extends farther than the fourth section. That relates merely to discrimination between shippers on the same line of rails.

I say that is only part of the problem, and just as much injustice may be caused by unfairness between two shippers on two different lines of rail going to the same point. Take that same Clearfield district the Senator spoke of. The rate is \$2.38 a ton on this coal going to Lake Erie. The haul is 304 miles. It is hard to carry these figures in mind, but this is a vivid illustration. From Tennessee coal can be sent 156 miles farther at a rate of 37 cents a ton lower. Justify that for me if you can.

Mr. BRUCE. Mr. President, will the Senator yield?

Mr. PITTMAN. I yield.

Mr. BRUCE. As I understand it, the Interstate Commerce Commission has ordered a departure on the New England coast for the very purpose of enabling the coal fields of Pennsylvania to meet the competition of which the Senator from Pennsylvania speaks.



Mr. REED of Pennsylvania. Quite the contrary. The departure was ordered in order to enable the West Virginia fields to ship right through Pennsylvania into Boston, and they are doing it.

Mr. BRUCE. My information is to the contrary.

Mr. REED of Pennsylvania. I have the figures.

Mr. BRUCE. The Senator is doubtless right, if he says he has the figures.

Mr. NORRIS. Mr. President, will the Senator from Nevada yield to me to ask a question of the Senator from Pennsylvania?

Mr. PITTMAN. I yield.

Mr. NORRIS. I am interested to know what justification is given by the Interstate Commerce Commission for making those rates.

Mr. REED of Pennsylvania. The case was tried out about July, 1925. The opinion of the commission was six to five, five commissioners dissenting. The majority, the six, decided that while there might be evidence that Pennsylvania's tonnage had fallen off amazingly, yet it was not proven that the fact that their freight rates were high was because of that.

Mr. GLASS. Why, may I ask the Senator, did the tonnage from the Pennsylvania mines fall off amazingly?

Mr. REED of Pennsylvania. I was just trying to tell the Senator. If he will let me finish my statement, I will come to that. The commission then held that to grant the relief that was asked would upset established business, and they would not do that; therefore, they denied the relief, although it was forcibly urged to them that every rate case is intended to upset established business. One would not bring a rate case if he were not trying to upset established business, and they ought to upset established business, where it is based on an injustice.

Mr. GLASS. The Senator has not answered the question I propounded to him. The inference to be gained from the Senator's statement was that the differential in the freight rate had caused this immense falling off of tonnage from the Pennsylvania mines, whereas it is not a fact that the Pennsylvania mines were closed down and were not operating, and that the owners of those very lines were coming down into Virginia and West Virginia and purchasing the coal at the mines there because they were having labor troubles at home?

Mr. REED of Pennsylvania. It was not labor trouble.

Mr. GLASS. It is my information that it was labor trouble, that the Pennsylvania operators had practically locked out their employees, and were coming down to West Virginia and Virginia and purchasing coal from those mines there, and shipping it to Chicago.

Mr. REED of Pennsylvania. If that were correct, it would be a forcible point, but the fact is that the Pennsylvania mines which are not having any labor trouble are shut down to-day because these discriminatory rates make it impossible for them to operate. Let me give some illustrations.

Mr. GLASS. My information is totally in contravention of that presented by the Senator.

Mr. REED of Pennsylvania. Then let me add to the Senator's information, if he pleases. The city in which we are standing draws what soft coal it gets largely from the Pocahontas fields and the New River fields, which lie along the borders of the Senator's State. The rate from those fields to the city of Washington is \$2.84, and the haul is 412 miles. Just the same kind of coal comes from up in Meyersdale, Pa., which is 207 miles away, against 412 for the West Virginia fields, just half the haul. The rate is \$2.84 from Meyersdale. So the mines in the Pocahontas field and the New River field have a monopoly of the Washington trade, because they are sending their coal for just half as much per ton-mile as the rate for which our coal can be brought, and the labor costs are much less.

Mr. GLASS. The information that came before the District of Columbia Committee on that point was that the Virginia and West Virginia coal, from the Pocahontas field, was coming to Washington because it was so vastly superior to the Pennsylvania coal.

Mr. REED of Pennsylvania. I believe that some of the representatives of the West Virginia operators testified to that; yes.

Mr. BRUCE. Mr. President—

The PRESIDING OFFICER (Mr. ODDIE in the chair). Does the Senator from Nevada yield to the Senator from Maryland?

Mr. PITTMAN. I yield.

Mr. BRUCE. To return to the question I put to the Senator from Pennsylvania, I think he is mistaken in the reply he made to me. I think he is laboring under an entire misapprehension. Mr. ESCH, of the Interstate Commerce Commission, testified, when this bill was pending before the Committee on Interstate Commerce, to this effect:

Another example of competition of this character may be found in the existing adjustment of rates on bituminous coal from mines in Pennsylvania and Maryland to points located on navigable waters in New England. There is a considerable movement of coal to this section from mines in Virginia by rail to Hampton Roads and thence by vessel. Coal producers in Pennsylvania must compete with this coal at such points as Boston, Fall River, Providence, New Bedford, and other water points. To meet this competition the rail lines forming routes from Pennsylvania have reduced rates to these water-competitive points.

That is just another illustration of how practically and beneficently a proper exercise of discretion under section 4 of the interstate commerce act operates, in my judgment.

Mr. REED of Pennsylvania. What I was referring to was the order made about three months ago by the Interstate Commerce Commission reducing the all-rail rates from these Virginia mines to Boston and other points in New England. I thought I had the figures here, but they are in my office, and I will get them for the Senator.

Mr. BRUCE. Perhaps the Senator's information on the subject, in which the Senator from Virginia is interested, is not more ample than it was on the subject in regard to which I questioned him.

Mr. REED of Pennsylvania. The Senator questioned me about the rail and water competitive rates. I had been speaking about the all-rail rate from West Virginia to Boston and other New England points. My answer, I think, was correct. I still insist that I believe it to be correct.

Mr. BRUCE. I do not see how it can be at all correct if the testimony of Mr. Esch was accurate.

Mr. REED of Pennsylvania. Mr. Esch was talking about a totally different thing. I will get the Senator the figures in a few minutes.

Mr. GLASS. I am talking about precisely the same thing the Senator from Pennsylvania is talking about, and my information is so totally different from his that I scarcely know how to proceed without seeming to contradict the Senator.

Mr. REED of Pennsylvania. If the Senator will indulge me for about 10 minutes, I can get the figures and give him the rates per ton from these various fields.

Mr. GLASS. My information is that there is a differential rate ranging from 34 cents to 43 cents in favor of the Pittsburgh operators as against the West Virginia and Kentucky and Virginia operators, and that the complaint of the Pittsburgh operators is that the spread is not greater than it is, notwithstanding the fact that the railroads do not want to make it greater. The Senator from West Virginia [Mr. GORFF], I see, has come upon the floor, and very likely he has the figures and can state them more exactly than I.

Mr. PITTMAN. Mr. President, I will go on with my address, if Senators will pardon me, while they are getting their figures. I do not think we are getting anywhere at all in this discussion about the figures.

Mr. GOODING. If the Senator will pardon me just a moment, I think it should be clearly stated that in the controversy between Virginia and Pennsylvania there is no long-and-short-haul question involved at all.

Mr. GLASS. For myself, I am opposed to any controversy on the floor of the Senate about those matters, anyhow. I do not think they ought to be determined here. I think they ought to be determined before the Interstate Commerce Commission.

Mr. REED of Pennsylvania. The fundamental question we have to determine is whether the Interstate Commerce Commission has used its discretion in common fairness.

Mr. GLASS. The Senator thinks it has not and I think it has, so we are unable to determine that.

Mr. PITTMAN. Mr. President, I will have to discontinue this colloquy so that I may finish.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. PITTMAN. I yield.

Mr. COPELAND. I know the Senator has been diverted and, I hope, rested by the colloquy. Before he concludes I hope he will make some reference to what effect the law would have upon shippers in the State of New York.

Mr. NEELY. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from West Virginia?

Mr. PITTMAN. I yield.

Mr. NEELY. The observation made a moment ago by the Senator from Virginia [Mr. GLASS] is absolutely correct. For more than a quarter of a century Pennsylvania and Ohio have, at the expense of West Virginia and Kentucky, enjoyed a highly preferential freight rate on coal shipped to the Great Lakes. That preferential rate still prevails.



From 1906 to 1911 the coal industry of northern West Virginia was handicapped by a freight rate to the Lakes which was 8½ cents a ton higher than that paid on coal shipped from the Pittsburgh district.

From the year 1912 to the year 1923 the coal producers of West Virginia and eastern Kentucky were the victims of a discriminatory freight rate in favor of the Ohio and Pennsylvania coal operators, which ranged from 8½ cents to 28 cents a ton.

At the present time the freight rate on coal to Lake Erie ports from the Pittsburgh district is \$1.66 a ton; from northern West Virginia, \$1.81 a ton; while from southern West Virginia and eastern Kentucky the rate is \$1.91 a ton.

The decision rendered by the Interstate Commerce Commission in the Lake Cargo Coal Rate case on the 16th day of last July, which has occasioned a number of brain storms in Pennsylvania and Ohio and provoked some unwarranted criticism in the Senate, involves a principle which has been before the commission in various forms and on numerous occasions since the commission was, in 1906, vested with the power to make rates. Excepting this most recent decision, every judgment the commission has ever rendered touching the principle in question has been favorable to Pennsylvania and Ohio and unfavorable to West Virginia, Virginia, Kentucky, and Tennessee.

But no Senator from any of these States that were injuriously affected by the discriminatory freight rates on their coal ever whined in this body about the commission's decisions which established the unfavorable rates; nor did any Senator from West Virginia, Virginia, Kentucky, or Tennessee ever defame the Interstate Commerce Commission for having handed down such decisions.

It is only when the commission refuses to render a judgment that will destroy the coal industry in West Virginia, Virginia, Kentucky, and Tennessee, and at the same time afford Ohio and Pennsylvania a monopoly of the soft-coal business in the Northwest, that the Interstate Commerce Commission is belittled and abused in the Senate.

There should be unanimous concurrence in the opinion expressed by the Senator from Virginia to the effect that the question of freight rates on coal, now pending before the Interstate Commerce Commission on a rehearing, ought not to be made the subject of debate in this Chamber. The commission is the duly constituted freight-rate-making body of the Nation. No attempt should be made to intimidate its members or to coerce them to decide a case before them in a particular way.

While the commission's decisions have not always been as favorable to the industries of my State as I have believed they should be, I am nevertheless convinced that the members of the commission have always acted in the very best of faith and that their findings have been, without exception, the result of most intelligent, painstaking, and conscientious consideration.

Let no one be deceived by the clamor which spokesmen for the Pennsylvania and Ohio coal operators have raised against the Interstate Commerce Commission because of its failure to increase the prevailing handicap in freight rates on West Virginia and Kentucky coal. If the purpose of the authors of this clamor is accomplished, a prohibitive freight rate to lake ports will be established on all coal from West Virginia, Virginia, Kentucky, and Tennessee; Pennsylvania will monopolize the soft-coal market of the Northwest, just as she has monopolized the anthracite markets of the rest of the country, and the coal consumers of Michigan, Wisconsin, Minnesota, North Dakota, and South Dakota will be at the mercy of the coal barons of the Pittsburgh and Ohio districts.

Once for all I vigorously protest against the very recently established and, to my mind, most reprehensible custom of criticizing the commission in the Senate every time it renders a decision that fails to meet with universal approbation.

If the commission has become useless or vicious, it should be abolished. But let us not indulge further in the unsportsmanlike performance of publicly impugning the motives of honorable members of an honest tribunal who are prohibited from speaking here in their own defense.

Mr. PITTMAN. Mr. President, this all illustrates that Commissioner Eastman, in concurring in a separate opinion, was right. Here are these gentlemen who have all been discriminated against, one of them discriminated against in one commodity, another discriminated against in another commodity; one part of the State is discriminated against, and the other part is favored. There never was any authority granted to the Interstate Commerce Commission to regulate railroads for making discriminations. You can not find a line in the act that ever was intended to give them the power of utilizing any regulating authority to restrict transportation in the interest of any community or against any community. That proposition

has grown up through their legislative absorption of power. There is no question about that.

The fourth section never was intended in the first place to become the rule. Away back in 1887, when they passed the rule that less should not be charged for the long haul than for the short haul, they said in special cases and under similar circumstances they might do something. They meant special cases, did they not? They did not mean that in every case where a railroad applied for a special rate it would be granted. They did not mean that any time a railroad could get more business that they would give it to them, did they? They did not mean that every time a community needed a special rate so as to be able to compete with another community that it was the duty of the Interstate Commerce Commission to give them that exception. Yet the Interstate Commerce Commission construed the exception as the rule until 1910, and Congress once again tried to impress upon the Interstate Commerce Commission that they meant that the fourth section should be the law, and that it should be in force at all times, except in very extraordinary cases.

What did they do? Congress struck out "similar circumstances and conditions," but the Interstate Commerce Commission went right on construing it as they always had; that is, they construed the exception as the law and the law as the exception until we came down to 1920. What happened in 1920? In 1920 Congress enacted a new provision that the more distant rate should be reasonably compensatory. Why did they do that? They did it because the Interstate Commerce Commission was using the proviso of the act for the sole purpose of putting water transportation out of business. They were not considering what the rate was; they were not considering whether the rate paid the railroad anything or not.

They were simply considering whether it was low enough to put water competition out of business. Therefore in the 1920 act Congress put in a provision that the rate to the more distant points should be reasonably compensatory.

The Senator from Iowa [Mr. CUMMINS], the chairman of the Interstate Commerce Committee of the Senate at that time when he reported the bill, stood on the floor of the Senate and interpreted the meaning of the words "reasonably compensatory." He said to the Senate that they had discussed that meaning in committee and agreed on it. He has stated before the committee and stated on the floor of the Senate that there was not a Senator there who understood it differently from the way in which he stated it. They discussed the meaning of it. On the floor of the Senate he said that it meant a rate that would not only return its part of the cost of the service but would return something for interest on the indebtedness and for dividends. But the provision has never been construed in that light by the Interstate Commerce Commission.

In the case under consideration we have three of the Interstate Commerce Commissioners, who make no effort whatsoever in their dissenting opinion, in which they state a desire to grant the application, to show that the rates were compensatory. I ask Senators to examine the opinion and see if they can find any such explanation. Commissioner Esch does not attempt to show anything of the sort. What he said is that "We are employed to look after the railroads. We have no responsibility toward the people." I hope the Senator from West Virginia [Mr. NEELY] will not think I am criticizing any of the commissioners. I dislike very much to criticize any of those gentlemen.

The limitation that Congress intended to put on the flexibility of rate making was this. Congress said to the railroads, "You do not have to charge twice as much for twice the distance. You do not have to charge a quarter more for twice the distance. You can charge exactly the same amount for twice the distance, but no less than that. That is the limitation." Is not that quite a margin when they will allow a railroad company to charge just as much to ship a certain article half the distance as they charge to ship the same article to another point twice the distance?

Senators may ask what remedy have the railroad companies? If it is an article which by any right at all they should carry, they can put the flat rate straight through. Chicago, for instance, asked to meet the competition of New York City and Pennsylvania and Pittsburgh in the matter of dry goods. How? By having a rate so low that it would pay to ship dry goods from Chicago by rail instead of from New York City around by water. Does it pay? If it pays why do they not give the same rate to Omaha or Denver or Reno or any place that is only half the distance? It certainly does not cost as much to go half the distance as it does to go the whole distance. They have what they call flat rates across the country. I mean by "flat rate" the same rate for the short distance as for the long distance.



Mr. Eastman said in this matter that it is not a local fight. I am not interested in the petty fight as to whether this coal mine is getting the best of that coal mine, or whether Virginia is getting the best of West Virginia or West Virginia is getting the best of Pennsylvania, or vice versa. Whenever they win it is a fine commission, and whenever they lose it is a damnable body. But why can we not look at the transportation problem as a national problem? Why can we not get away from these little selfish petty interests in the problem? Is there anyone here who has so little vision that he can not realize that water transportation for those articles that can be shipped by water is one-half or one-third cheaper than any other means of transportation?

Do not Senators know that wherever articles require quick transportation the boats can not carry them at all. Do they not understand that for every mile that we have water upon which we can travel there are 100 miles that must be traveled by rail to distribute the traffic? What we are trying to do is to fix a policy, a principle, not to interfere with the Interstate Commerce Commission. The Interstate Commerce Commission was constituted for the purpose of rate making and regulating the railroads. It was not appointed for the purpose of deciding whether West Virginia, or Virginia, or Pennsylvania should have the Boston market. It was not constituted for the purpose of saying whether Chicago should have the steel market on the Pacific coast or Pittsburgh should have the steel market on the Pacific coast. The commissioners have assumed that authority. They never had it given to them by law. There is not a word in the act that ever gave it to them. There is nothing in the act to that effect except that in special cases they may grant a less rate for the longer haul than for the shorter. What was meant by that? Does anyone think that the Congress had water transportation in mind at that time? No; they meant that there might be a circuitous rail route here and there might be a direct route there, and that it might be a good idea to have railroad competition at the particular point involved. The railroads have their own territory. We have left that clear, but when we look back into the history of the situation, when we see the actual result, when we see the rivers denuded of their boats, when we see the hundreds and hundreds of millions of dollars that we have spent in dredging channels and removing sand bars and straightening out banks of rivers to coax boats to come to the waters, and when they do not come then we ought to ask ourselves why it is?

There is some reason for it. We know why it is. We have been told why it is. We appointed General Ashburn to take charge of the Government barges for the purpose of ascertaining whether or not we could run boats on our rivers. He told us before the committee of the fight he had had against the railroads in every move he made. They fought him every inch of the way.

There is a joint rate from Birmingham to New Orleans. Twenty-six miles of that route is a rail haul down to the barge line; and the rest of it, some three or four hundred miles, is by water. The rail line gets nearly twice as much out of the haul as the barge line does. Why can they not cooperate together? Let General Ashburn tell why we have not any boats on the river. Let him tell why we never will have any regular boat traffic on the river. I will read it:

I am convinced that no agency other than the Government of the United States would have withstood such vicious assaults made upon our demonstration, such misrepresentations of facts, such combined attacks to belittle the demonstration, and to prevent the success, as the Government has, in the reestablishment of the great common carrier operated on the Mississippi-Warrior River by the Inland Waterways Corporation.

Private capital will undoubtedly invest in private and contract carriers and do all it can to justify the creation of navigable streams, but to fully distribute the benefits of such cheap transportation requires a demonstration by the present fully empowered governmental corporation of the economic possibility of such common carriage until such time as the conditions precedent to success are established and private capital will invest in an operation no longer a hazardous venture. The sine qua non of successful common carriage is cooperation with the railroads. So long as it remains in the power of the railroads to destroy water transportation, not governmentally operated, so long will private capital refuse to contract on such a venture.

That is the situation. Now let me tell about some of the things to which we particularly object in the Middle West. We want the Panama Canal to exist because it furnishes a cheap means of transportation. We ship our products to the Pacific coast, and they are put on the boats and brought east through the Panama Canal at rates cheaper than we could ship them from Nevada across the country by rail. If we close down the Panama Canal we would lose. Possibly we do not lose so

much as some of the selfish gentlemen do on the Atlantic coast who want both water and rail for nothing. Nevertheless we lose.

There is another thing we may have the right to object to, and I think that any person has the right to object to it. We are guaranteeing to the railroads of the country, through the Interstate Commerce Commission, rates that will earn them a certain return on their investment. Does anyone think we should take part in building the Panama Canal and then take part in destroying the canal and allow the railroads to utilize rates to the destructive point, rates in which there is no profit to the railroads, when we have to make up the profit at the interior point? How can it be helped?

Let us consider the seven railroads that made the application which we have been discussing. Those seven railroads were entitled to a certain gross earning to enable them to earn what they are legally entitled to earn. When they put their rates down 25 or 30 per cent on articles to the coast points they lose revenue. They have to make up that revenue by higher rates at some other point. Those seven railroads, at exactly the same time they were asking to reduce the rate 25 or 30 per cent to San Francisco, Los Angeles, and other coast points, were asking the Interstate Commerce Commission to increase the rates to interior points by 5 per cent. That is illustrative of the lack of justice in the whole situation.

I have noticed statements in the press that the President of the United States is back of a great movement in the interest of the water routes of the country. An effort is going to be made to develop them. All of the great waterways should be developed. There is no man but knows we can not get private capital to put boats on the rivers any more than we can get them to put boats on the Mississippi River to-day, no matter how much money they put in or how they build them. As long as we held over the heads of private capital the threat that any day there may be applied a competitive rate at competitive points that will take half the boats off the water, private capital will not undertake to invest in boats.

The application here discussed has been read into the Record. The State of Nebraska pays on dry goods that move from Chicago \$1.58, while San Francisco pays on the same articles \$1.10. That is the situation. That is the way it moves. I suppose the Senators from Nebraska would like to support that kind of discrimination and that kind of a theory.

When we built the Panama Canal and had in mind making it one of the great commercial arteries of our country, we were so jealous in our desire to protect it against destruction that we placed in the Panama Canal act itself a direct and positive provision that no railroad company should own or control any boat line moving through that canal; and yet, to-day they can take half and probably all of the traffic going through that canal without going to the expense of building a boat. How? By getting the Interstate Commerce Commission to give them a terminal rate at Los Angeles and San Francisco at what they call "out-of-pocket cost" and then letting them hold up the rates to the intermediate points so as to keep up their earnings. They can circumvent the very intention of the builders of the Panama Canal by a simple little petition to the Interstate Commerce Commission. Does it not appear inconsistent when we are trying to defend the Panama Canal and make it an independent highway for boats, that now we would construe the language "in special cases" in section 4 to mean that the commission shall have power to give half of the Panama Canal traffic to the railroads? That is what it means. It means that and nothing else on earth.

My personal interest in this proposition as a resident of Nevada is only suffering in one direction. We are taxed to help pay to build the Panama Canal and then again we are taxed to maintain the discriminatory rates for the purpose of destroying the Panama Canal. That is our position.

But I would have even another feeling in the matter if I lived on one of these great rivers of the country. If I lived in the city of Memphis, where lives my friend, the Senator from Tennessee [Mr. McKellar], whom I see sitting now before me, on the greatest river in the world, a river that can take all of the traffic of the country between the great mountains and carry it down on to the broad ocean and carry it to every port of the world—if I lived there I would look for the time to come when there would be great docks all along the water front of the city of Memphis. I would look for the time to come that from all over the country, distant hundreds and hundreds of miles, there would come roads dumping their products into the great ships at those docks. I would look for the time to come when, instead of having skiffs land on the mud flats in front of Memphis, as to-day, we should have running down the Mississippi the old-time fleets, and far bigger ones, even, than were in existence then.



Mr. McKELLAR. Mr. President, if the Senator from Nevada will yield, I will say that since the establishment of the barge line we have on the Mississippi River at Memphis probably the most approved and up-to-date docks in the world of the kind, and I am rather inclined to think that the amount of freight being hauled down that stream now to and from Memphis and by Memphis is larger than it ever was before in its history.

Mr. PITTMAN. I am glad the Senator has made that statement. We discussed that a little while ago while he was out of the Chamber. It is perfectly feasible and the demonstration has proved its success.

Mr. McKELLAR. It has.

Mr. PITTMAN. I was told that the barges there can carry down the river 116 carloads at once. But what else is there along that line? We put in charge there one of the ablest river men that we could employ, a great engineer, a great executive, to give this a tryout, and he has tried it out since 1920. His report, which is here, is that the barge line is a success, but he states that no individual could have made a success of it in the face of the competition of the railroads. It is his opinion also, sir, that no individual will ever invest money in those boats or in any other boats for general traffic on the Mississippi River so long as the power is left in the Interstate Commerce Commission to allow a competitive rate at "out-of-pocket cost" to competitive points.

There is now quite a leeway. For instance, if they want to charge a rate of a dollar a hundred from Chicago to New Orleans they can do it. The only restriction is that they can not charge any more than a dollar from Chicago to Memphis. Is not that quite a leeway? If a dollar from Chicago to Memphis is a reasonable rate, then a dollar to New Orleans is much lower than a reasonable rate. Do Senators think that the limitation should be that the railroads should not charge any more for half the distance than for the whole way?

Mr. McKELLAR. Of course, as the Senator from Nevada knows, the 20 per cent differential in favor of the water transportation is fixed by law. There is an absolute guaranty there really of the success of the barge line; so long as that law is in effect the barge line is sure to make money and prosper.

Mr. PITTMAN. What does the Senator mean by 20 per cent differential?

Mr. McKELLAR. The law provides that the rates charged shall be 20 per cent lower than the rail rate.

Mr. PITTMAN. That is true enough; but even a rate 20 per cent lower than the rail rate does not necessarily protect the boats, because if the railroads can secure from the Interstate Commerce Commission permission to reduce their rates, the boats may have to reduce their rates 20 per cent below cost. Then they will go out of business. That is the trouble about the situation. I am not inveighing against what is happening now, I will say to the Senator from Tennessee, but against the unsound principle which we allow to exist when we say that the railroads may charge less for the longer distance than for the shorter distance, with the result of eliminating water transportation. Just think of the absurdity of the proposition! This whole country to-day is striving to secure a great inland water system, because it is the cheapest form of transportation in the world and our country is blessed with it beyond all countries on earth. At this very time transportation difficulties are doing more to bring poverty to the farmers of this country than anything on earth; the farmers of the country are calling to Congress to relieve them from the burdens that are bearing down on them; but we shut our ears and we shut our eyes to the very best opportunity we have. We go before the Interstate Commerce Commission and ask them to reduce the cost of transportation on farm products, but we are told the railroads can not make the revenue guaranteed to them if the rates shall be reduced any lower. I know that there is a great ship canal on the Mississippi River running on down and from the Ohio River and other rivers and that by that route export products could be shipped for about one-third what is being paid to the railroads to-day.

There is not any question about that. We talk about doing it. We say, "Oh, yes; we are going to build great inland waterways." We have been talking about that for a long time. We wonder why there are no boats on the rivers. We know why boats are not there; we know that the same power that drove them off in 1887 and kept them off is here now, and that no intelligent man would undertake the business as long as that threat hangs over him. Yet we say to ourselves, "Oh, no; we can not interfere with the discretion reposed in the Interstate Commerce Commission; we have got to lodge discretion somewhere." All of us get busy with excuses at certain times. The truth about the proposition is that the only discretion that it ever was intended to give to the Interstate

Commerce Commission was the discretion to regulate railroad rates. It was never contemplated that the commission should have the power to take into consideration market conditions and discriminations; or should have the power to say that one coal mine shall ship its product to this market and another coal mine to another market; that the iron mines shall ship to some other market; that one city shall be great and that another city shall not be great; or that we will move the Atlantic coast out to Chicago and we will move Chicago down to the Gulf. That power of discrimination should be taken away from the Interstate Commerce Commission. It is not a sound discretion to lodge in anyone.

All that we have asked in the matter is to recognize the inevitable law that water transportation for a heavy bulky product that can move by water is the cheapest transportation on earth, and that is the only kind of traffic that will be carried by water. All other kinds of commodities will move by rail. Let us build up the water transportation and let us build up also rail transportation and let the two be coordinated; but we say that the fourth section of the interstate commerce act, adopted in 1887 and readopted in 1910 and readopted again in 1920, should provide that the only latitude the Interstate Commerce Commission shall have will be to say to the railroads that they shall charge the same rate for the long haul as for the short haul, but no more.

That is latitude enough, and that was the intention of the act. When the clause "except in special cases" was put in, Congress never had in mind that it would work for the destruction of water transportation.

But the railroads say, "We do not want to destroy water transportation; we only want half of it." Mr. President, what God-given right have the railroads to an artificial rate that makes them no profit, but is designed for the purpose of destroying half of the Panama Canal traffic? When we passed the Panama Canal act why did we not instead of putting in that act that the railroads should not operate boats through the canal provide that they should not operate over a half of them? If we intended that they should have half of the traffic which would otherwise go through the Panama Canal those are the words we should have used. However, the railroads are accomplishing exactly the same thing at the present time as they were accomplishing then. There is no question about that at all.

The Senators have got to face the proposition as to whether or not they are going to encourage water transportation in this country. If they are not going to do it, do not tell the people of this country that they are getting ready to do it; do not tell the people of this country that they are going to spend hundreds of millions of the Government's money to give them ship canals, because Senators know that even if such ship canals shall be provided, not a boat will be run on them. They realize that. I think it is a crime, I think it is an outrage to tax the people hundreds of millions of dollars to build waterways when at the same time it is provided that the railroads may have all the traffic. If that is going to be the policy, if it is simply going to be a question of spending so much of the people's money by pork-barrel methods on different harbors and rivers in this country, then, to say the least, I think it is not a very high purpose to accomplish.

There has not been anyone here who could deny the proposition that it was the intention of the railroads to take half of the traffic through the Panama Canal. There is not one here to deny that there was an effort on the part of the Interstate Commerce Commission to give them half of the traffic through the Panama Canal, and the only reason they did not get it was because they had involved in their application market conditions rather than competitive conditions. Seven of the commissioners against three rendered a decision denying the application. One commissioner was sick or the vote would have been seven to four. Although seven of them denied the application, which was for the benefit of Chicago—

Mr. GOODING. Mr. President—

The PRESIDING OFFICER (Mr. WILLIS in the chair). Does the Senator from Nevada yield to the Senator from Idaho?

Mr. PITTMAN. I will conclude in a moment. Although seven of them rendered that decision, if the rate were raised 15 cents to-morrow it might still have its destructive force and yet be granted; there is no question about that; or the commission might change its mind or the members of the commission might change. It is a constant threat, and until that discretion is denied the Interstate Commerce Commission we can not, as General Ashburn says, expect to have private carriers on the rivers of this country.

Mr. GOODING. I call the Senator's attention also to the fact that it was the last two members appointed on the com-



mission that changed the commission's opinion; that is, as it stands now, as far as the violations are concerned. Had the case been decided a year ago, there is good reason to believe that it would have been decided in favor of the violations; so it is the uncertainties that always kill.

Mr. PHIPPS. Mr. President, I do not propose to discuss the pending long and short haul bill at great length to-day; but I do desire to make a concise statement, and in order to preserve its continuity I prefer not to be interrupted during that statement. I shall be glad to answer any questions that I can after the conclusion of my remarks.

Being sincerely anxious to secure needed assistance for Colorado, and other Western States in the matter of freight rates, I have given the pending bill serious thought and study. If it were in the interest of western shippers or the consuming public, and would have a beneficial effect upon agricultural or industrial conditions, I would be among the first to support the plan. My conclusion, however, is that this measure does not afford any substantial relief at all, but may actually prove harmful to western interests.

The first proposition—that the Gooding bill gives no additional aid to western farmers or business men—is proved by the fact that, if enacted, it will not change transcontinental freight rates or those to Colorado and similar points. Briefly, this bill provides that the railroads may not make lower rates for a long haul to meet water competition than for a shorter intermediate haul, except for export trade. With the exception of certain coastwise traffic, it is my understanding that this theory, which is contended for so strenuously, is now in effect. At present there are no railroad rates from the Atlantic coast to Denver, for example, that are higher than those to the Pacific coast. What, then, does this bill do for Colorado and other States similarly situated? It simply preserves conditions as they are, and makes it impossible for the Interstate Commerce Commission to consider requests which would permit, in certain specific cases, the carrying of transcontinental freight at lower rates than shipments to intermediate territory. How, then, can it possibly aid conditions in the West?

Instead of enacting this proposed legislation, such requests now before the Interstate Commerce Commission should be seriously considered in the interest of Rocky Mountain and midwestern citizens themselves. In order to meet Panama Canal competition, the railroads are willing to reduce rates to the coast, provided they are not required to reduce existing rates to intermediate points, which they can not afford to do at the same time. The only reason they can make the desired rates to Pacific coast points is because they are getting very few of such shipments at present; and it is better business to carry freight at lower charges than to move empties, which must go West in any event in order to transport shipments from California and other States. Such permission, if granted by the Interstate Commerce Commission, will permit the railroads to take away from vessels going through the Panama Canal part of their freight, and carry it by rail instead; that is all.

Colorado will be benefited directly by such fourth-section relief in the case of products which it ships to the coast, manufactured and otherwise. A case in point is that of the Colorado Fuel & Iron Co., which formerly had an active market in California, Oregon, and Washington, but which has lost practically all of such business to eastern competitors, such as the United States Steel Corporation, which can now ship by way of the Panama Canal. If anyone doubts this statement, let him study the hearings held before the Interstate Commerce Committee of the Senate last January, and let him read the illuminating testimony of a responsible Denver attorney, Mr. Fred Farrar, who is the general counsel for the Colorado Fuel & Iron Co., a stalwart institution of which the entire West is justly proud. Mr. Farrar testified that his company—

as a manufacturing institution is being crushed by this competition through the canal.

Again he said:

The very life of the company—I think I can say without speaking extravagantly—is at stake because of the situation.

Of course, as long as the Interstate Commerce Commission permits rates to remain as they are, eastern manufacturers will have a monopoly of the Pacific coast markets, and it is futile to attempt to build up industries in the interior or to construct factories in Denver in order to sell products in Pacific coast or eastern markets. On the other hand, if lower rates by rail are put into effect for the long westbound hauls across the continent, the intermountain district would reap, as heretofore, the benefit of a proportionate reduction in freight rates.

Colorado and Mid-Western States will benefit indirectly by the defeat of this bill, for increased railroad business as a substitute for the thousands of empties now moving westward will mean larger returns for the railroads, and will very shortly lead to lower rates all along the line. Conversely, the passage of the present bill, by preventing fourth-section relief in all cases excepting on export business, will tend to reduce railroad revenues; and, as expressed by Commissioner Esch, who appeared for all but two of the members of the Interstate Commerce Commission—

If these revenues in turn become insufficient to meet the cost of operation, upkeep, and maintenance, return on investment, taxes, and other necessary expenses, increased rates on other traffic, which must largely be borne by the intermediate points or impairment of service, or both, are eventualities which sooner or later must be considered.

Interior States, such as Colorado, will also benefit indirectly by the defeat of this bill, because the program now advocated by the commission, which it is admitted will mean much larger transcontinental shipments by rail—it can have no other purpose or effect—will aid local business, local pay rolls, and local purchases; whereas freight moving through the Panama Canal means nothing to such States.

Mr. President, all that western producers ask is a square deal. All that they ask is a chance to compete in those markets which by geographical location are rightfully theirs. We are willing to put Colorado products to the rigid test of comparison with any others grown or manufactured in the United States or foreign countries; and we are willing to meet such prices, too, provided we do not have the overwhelming handicap of higher freight rates.

On principle there is nothing unfair in the proposal that for the benefit of the Middle West and of the entire country the railroads be permitted to meet water competition. There is no danger that water transportation will be put out of business, because of the economic reason that rail transportation usually costs much more than water. Furthermore, inland waterways are adequately protected by our present laws, and the same is true of coastwise trade; for the Interstate Commerce Commission is required to foster and preserve in full vigor both rail and water transportation.

There is no danger, in event of the failure of this bill to pass, that the roads will straightway indulge in an orgy of transcontinental rate reductions, because, as matters stand at present and as I hope they will remain, the Interstate Commerce Commission must be consulted on each rate application, and the desired permission can not be granted unless such lower rates are reasonably compensatory for the service performed.

I wish to quote from a decision of the commission which sets forth clearly the principles by which it is governed in granting fourth-section relief in so far as the measure of the rates for the longer haul is concerned. The decision reads as follows:

In the light of these and similar considerations we are of opinion and find that in the administration of the fourth section the words "reasonably compensatory" imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act.

In my opinion fourth-section relief should appeal to us on patriotic grounds, because of the rapid growth of foreign competition. If this power is taken from the commission, its hands will be tied, and other countries, simply because of advantageous shipping conditions on the seaboard, will have an unfair advantage over domestic producers and manufacturers who are far inland and must find their markets on either coast.

Again, Mr. President, this bill if passed would only be a successful attempt to take from the Interstate Commerce Commission its discretionary power and to substitute for that highly technical and scientific function rate making by act of Congress. Without holding any brief for the commission, I firmly believe that the creation of such a body was a very wise step; that its work has been fundamentally sound; and that the theory of gathering all facts and hearing all sides so as to lay an economic foundation for rate making is the one on which we should proceed.

I am convinced that we attack the problem from the wrong angle when we attempt to solve it by stripping the commission of part of its power. A more logical remedy, it seems to me, would be to proceed in the other direction and to give that bureau more authority by permitting it, for example, under proper restrictions, to regulate traffic going through the Pan-



ama Canal, so that no injustice may be done to shippers in the interior of the United States. I hold that where the railroads can be given additional business without increase in rates, as in the case of the requested relief from the long-and-short-haul clause, such action should be taken; that this will partially remedy existing conditions; and that a still larger measure of relief will be afforded when still more business is routed over the railroads through proper control of competitive rates through the Panama Canal. In the end that will be the solution, for it strikes at the very heart of the existing basis for complaint and furnishes an adequate remedy. We should lay our plans accordingly, reposing confidence in the Interstate Commerce Commission, which we have created, and giving it sufficient authority to make certain that equitable freight rates shall exist throughout the United States.

Mr. President, I ask unanimous consent to have printed in the RECORD, at the conclusion of my remarks, a list of Colorado organizations that have filed protests against this bill, and a telegram on the subject signed by officers of 18 commercial and manufacturing concerns.

The PRESIDING OFFICER (Mr. WILLIS in the chair). Without objection, that order will be made.

The matter referred to is as follows:

The following is a list of Colorado organizations that have filed protests against the Gooding long and short haul bill:

Denver Chamber of Commerce, Denver; Northern Colorado Traffic Association, Fort Collins, Greeley, Loveland, Longmont, Windsor, Eaton, Brighton, and Ault; Fort Collins Chamber of Commerce, Fort Collins; Salida Scenic Line Service Club; Traffic Club of Denver, Denver; Rocky Mountain Coal Mining Institute, Denver; Benevolent Protective Order of Elks, No. 808, Salida; Trinidad-Las Animas County Chamber of Commerce, Trinidad; Employees Representatives, Colorado Fuel & Iron Co., Pueblo, Colo.; Denver Commercial Traffic Club, Denver; Florence Chamber of Commerce, Florence; Minnequa Works Foremen's Club, Pueblo; Grand Junction Scenic Line Service Club, Grand Junction; Trinidad Scenic Line Service Club, Trinidad.

The following is a list of Colorado organizations who recommend the passage of the bill:

Allied Council of Improvement Associations, Denver; West Thirty-second Avenue Improvement Association, Denver; Trades and Labor Assembly, Denver; Colorado Potato Growers Exchange, Denver; Montrose County Chamber of Commerce, Montrose; Federated Trades Council, Colorado Springs; Western Colorado Chamber of Commerce, Delta; Del Norte Potato Growers Association, Del Norte.

MARCH 9, 1926.

HON. LAWRENCE C. PHIPPS and RICE W. MEANS,

*United States Senate, Washington, D. C.:*

We understand Senate bill 575, by Mr. GOODING, of Idaho, will come up for vote very soon. Passage of this proposed legislation can not possibly benefit Colorado, but may work serious injury to Colorado commercial and manufacturing interests. Fourth section interstate commerce act should remain in its present flexible condition, and departures should be permitted as occasion requires. Chambers of Commerce of Denver, Colorado Springs, Pueblo, Florence, Walsenburg, Fort Collins, and Trinidad, the Denver Commercial Traffic Club, Traffic Club of Denver, Northern Colorado Traffic Association, and many others have indicated their opposition to this legislation. We most earnestly urge that you oppose to the utmost the passage of this bill.

Hallack & Howard Lumber Co., by B. Coldren, president; United States Portland Cement Co., by J. E. Zahn, secretary; Carter, Rice & Carpenter Paper Co., by J. H. Custance, treasurer; R. Hardesty Manufacturing Co., by J. W. Day, traffic manager; Colorado Fuel & Iron Co., by J. F. Welborn, president; W. A. Hover & Co., by W. A. Hover, president; Denver Dry Goods Co., by H. L. MacWhirter, president; Tritch Hardware Co., by O. E. Bare, vice president; McPhee & McGinnity Co., by J. Elmer McPhee, secretary; Perkins-Epeneter Pickle Co., by E. E. Perkins, secretary; Bayly-Underhill Manufacturing Co., by W. F. Yetter, secretary; Mid-West Steel & Iron Co., by A. G. Fish, president; Denver Rock Drill Manufacturing Co., by A. H. Skaer, vice president; Stearns-Roger Manufacturing Co., by Thomas E. Stearns, president; W. C. Nevin Candy Co., by L. C. Blunt, president; Eaton Metal Products Co., by J. R. Travis, president; Joslin Dry Goods Co., by E. H. Collins, vice president; A. T. Lewis & Son Dry Goods Co., by C. S. Haughwout, treasurer.

Mr. BRUCE obtained the floor.

Mr. GOODING. If the Senator from Maryland will yield for the purpose, I wish to submit a unanimous-consent request.

Mr. BRUCE. Certainly.

The PRESIDING OFFICER. The Senator from Idaho submits a unanimous-consent request, which the clerk will read.

The reading clerk read as follows:

Ordered, by unanimous consent, that on the calendar day of Wednesday, March 24, 1926, at not later than 3 o'clock p. m., the Senate will proceed to vote without further debate upon any amendment that may be pending, any amendment that may be offered, and upon the bill (S. 575) to amend section 4 of the interstate commerce act, through the regular parliamentary stages to its final disposition; that a recess be taken on Tuesday until 12 o'clock m. Wednesday, and the time between 12 o'clock and 3 o'clock p. m. on said day to be equally divided between the proponents and opponents of the bill, the time of the former to be controlled by Senator PITTMAN and of the latter by Senator FESS.

The PRESIDING OFFICER. Under the provisions of the third paragraph of Rule XII, the Chair directs the clerk to call the roll.

The principal legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	McKellar	Sheppard
Bayard	Frazier	McLean	Shortridge
Bingham	Gillett	McNary	Simmons
Blaise	Glass	Mayfield	Smoot
Borah	Goff	Means	Stephens
Brookhart	Gooding	Metcalf	Swanson
Broussard	Hale	Moses	Tyson
Bruce	Harrell	Neely	Wadsworth
Butler	Harris	Norris	Walsh
Cameron	Harrison	Nye	Warren
Capper	Heflin	Overman	Watson
Caraway	Johnson	Phipps	Weller
Copeland	Jones, Wash.	Pine	Wheeler
Couzens	Kendrick	Ransdell	Williams
Deneen	Keyes	Reed, Pa.	Willis
Edwards	King	Robinson, Ind.	
Fess	La Follette	Sackett	

Mr. SHORTRIDGE. I was requested to announce that the Senator from Nevada [Mr. PITTMAN] is detained in committee.

Mr. KING. I desire to announce that the Senator from Georgia [Mr. GEORGE] is detained in the Committee on Privileges and Elections.

The VICE PRESIDENT. Sixty-six Senators having answered to their names, a quorum is present. The Senator from Idaho submits a request for unanimous consent. Is it desired to have it again read?

Mr. FLETCHER. May I ask what the request is?

The VICE PRESIDENT. That on the calendar day of Wednesday, March 24, 1926, at not later than 3 o'clock p. m.—

Mr. WATSON. If the Chair will pardon me, I will say to the Senator from Florida that the debate on the long and short haul bill is well-nigh concluded, though there may be some other Senators who want to debate it. The idea is to wait until all absent Senators have returned who want to vote on the bill. It is a request for unanimous consent to fix the time of voting for next Wednesday, a week from to-morrow.

Mr. FLETCHER. On the pending bill?

Mr. WATSON. Yes.

Mr. FLETCHER. I thought the time had already been set.

Mr. WATSON. No; it has not been. The idea is to permit any appropriation bills which may be ready to be brought before us in the meantime, but any Senator who wants to discuss the long and short haul bill may do so.

The VICE PRESIDENT. Is there objection to the unanimous-consent request? The Chair hears none, and the order will be entered.

Mr. BRUCE. Mr. President, I assume that the Members of the Senate are more or less familiar with the provisions of section 4 of the interstate commerce act. That section declares that it shall be unlawful for a railroad carrier to receive a larger compensation for the transportation of passengers or property for a shorter than for a longer distance over the same route or line, the shorter distance being included in the longer. That is the general rule prescribed by section 4. The section further declares, however, that the Interstate Commerce Commission may, in special cases, depart from that rule.

At first blush it would seem to be a highly arbitrary and unjust thing that a railway carrier should receive a larger compensation for a shorter than for a longer distance; but when typical circumstances under which the rule may well be departed from are considered it will be seen that the right of the Interstate Commerce Commission to order such a departure, under special conditions, may produce the most profitable and beneficial results. I am justified in saying that, in the long run, there is more to be gained for the public welfare from an elastic than from a rigid application of the fourth section of the interstate commerce act.

The Interstate Commerce Commission has frequently ordered departures from the general rule of the fourth section, and it is instructive to ask under just what circumstances it has done so, because reference to those circumstances will enable us to form an intelligent and satisfactory conception of how the rule, with its qualification, actually works in practice.



One very common case in which a departure is allowed by the Interstate Commerce Commission to a railway carrier is when a straight railroad line and a circuitous railroad line meet at a common competitive point. Such a case was that of the Illinois Central Railroad, a straight-line railroad, and the Chicago, Rock Island & Pacific, and Charles City & Western Railways Co., both of which operated their roads between Charles City, in the State of Iowa, and Omaha, in the State of Nebraska.

To enable the latter road to compete with the Illinois Central the Interstate Commerce Commission allowed it to charge less at points at which it came into competition with the former road than at intermediate points. The results are altogether beneficial. The two lines compete with each other, and the general public has the right to use the one or the other as best suits its convenience. In other words, instead of having only one agency of transportation the public has two. So much for one typical case in which the Interstate Commerce Commission has allowed a departure. It is, of course, a case of very great interest to the Senators from Nebraska and Iowa.

Another case in which the Interstate Commerce Commission allows a departure is where there is a weak road unable to stand alone without its aid and yet of great value to the region through which it passes, that meets a stronger road at some point of competition. In order to enable such a road to face the competition of a stronger the commission gives it the benefit of a departure. A case of this kind was that of the Tennessee Central, a railroad which passes through a sterile, mountainous country from Emory Gap, in Tennessee, via Nashville, Tenn., to Hopkinsville, Ky. At Nashville it meets the competition of the Louisville & Nashville Railroad, one of the great railroads of the country. To qualify the Tennessee Central to meet this competition the Interstate Commerce Commission allows it to charge lower rates to Nashville than to intermediate points. But for the license thus given, the Tennessee Central would probably not be able to operate at all, and the advantages that it confers upon the territory which it traverses would be wholly lost to that territory.

Again, a departure is sometimes allowed by the Interstate Commerce Commission in order to equalize two important seaports. At one time, for instance, there was a large inflow of green coffee into the United States through the port of New Orleans. Then a tendency on the part of such coffee to drift into the United States through the port of Galveston became manifest.

The distance from Galveston to the points of destination interested in the importation of green coffee was greater than that from New Orleans to the same points. So the Interstate Commerce Commission allowed the railroad lines leading out of Galveston to those points to charge less to them than to intermediate points. Nobody was injured; everybody was benefited. Each of the ports got a part of the profit of the importations. The coffee shipped from Galveston competed with the coffee shipped from New Orleans, and by virtue of the lower prices produced by the competition the consumer was just that much better off.

Again, a departure is sometimes allowed by the Interstate Commerce Commission for the purpose of setting up market competition. An illustration of that kind of departure is found in an order of the Interstate Commerce Commission allowing a departure in the transportation from the West of beet sugar which comes into competition with imports of Cuban sugar through the port of New Orleans. The results are an opportunity on the part of our own domestic sugar producers to compete on terms of equality with the producers of Cuban sugar, and cheaper sugar to the consumer.

Another case in which a departure is allowed by the Interstate Commerce Commission is where a particular agency of transportation is in an extraordinary state of congestion. Some years ago railroad traffic between the South and New England was so excessive that the cotton mills of New England could not obtain an adequate supply of raw cotton. So the Interstate Commerce Commission allowed the railroads leading down to the South Atlantic seaboard to charge a lower rate on cotton to the ports on that seaboard than to intermediate points, so that the pressing wants of New England might be supplied.

Again a departure is sometimes allowed by the Interstate Commerce Commission when conditions of famine or scarcity resulting from drought call for a departure. Some years ago, when such a drought was prevailing in the State of New Mexico, the Interstate Commerce Commission allowed cattle feed to be taken into that State at lower rates to points of destination in that State than to intermediate points, and also allowed cattle to be shipped out of that State in accordance

with the same principle of departure. The case was one to which the term that is so often used in connection with such departures—that is to say, the term "relief"—was peculiarly applicable.

Again a departure is sometimes allowed by the Interstate Commerce Commission when a joint railroad line finds itself in competition with a single railroad line, because a joint railroad line is hampered by the cost of transshipment, and to that extent can not compete on equal terms with a single-rate line. The expediency of allowing a departure under those circumstances is too manifest, I am sure, to require observation.

When the Gooding bill, as the pending bill is known, was introduced into the Senate during the Sixty-eighth Congress, it proposed to place absolutely under the ban of condemnation all such departures as I have enumerated, except departures that might arise in the case of competition between a straight railroad line and a circuitous railroad line.

Mr. GOODING. Mr. President, I am sure the Senator from Maryland wants to be correct in regard to that. What he states is true of the bill as originally introduced, but the bill as amended permitted violations so far as circuitous lines were concerned. I am sure the Senator desires to be correct in that particular.

Mr. BRUCE. Of course; but I do not regard that as very material.

Mr. GOODING. As originally introduced the Senator is correct, but the bill was amended.

Mr. BRUCE. I am speaking of the bill as it was considered by the Senate in its amended form after its original introduction.

That bill, however, did also allow a departure where relief was to be given to a famine-stricken section. Every one of the kinds of departures that I have specified are permitted by the Gooding bill of the present session; that is to say, the present Gooding bill ignores all those rail departures exactly as if they had never been of any concern to the author of that bill.

The pending bill simply provides that no departure from the rigor of the fourth section of the interstate commerce act shall be allowed for the purpose of meeting water competition. If departures are such unjust, unreasonable, and oppressive things, why should that not be true of all other rail departures as well as of rail departures prompted by water competition? In other words, the structure of the original Gooding bill has been profoundly modified, indeed, except as respects the sole matter of water transportation, has been abandoned, despite the contention which has been made in and out of season for years by the intermountain territory that departures, other than those permitted in connection with water competition, were just as indefensible as the latter. My hope now is that the next time that this bill is brought forward, should it be defeated at this session of Congress, it will be brought forward on a scale so reduced as to approximate the vanishing point.

Other departures should not be measured by one rule and departures inspired by water competition by another rule. There is no reason, there is no justice, there is no logic, there is no consistency in that. Under the circumstances I think that I am entirely warranted in saying that if the author of the pending bill has not abandoned the ground that he has merely because he deemed it untenable, it must have been for the sake of some sort of strategic retreat.

As was suggested by the Senator from Ohio [Mr. FESS] the fatal infirmity in the pending bill is that it violates one of the fundamental principles of the transportation act of 1920—a provision as truly organic as any contained in that act.

Section 500 of the transportation act says that it must be so administered as to foster and preserve in full vigor both water and rail transportation—not simply water transportation, not simply rail transportation, but each agency as fully as the other. The Senator from Idaho [Mr. GOODING] and the Senator from Nevada [Mr. PITTMAN] talk about water and rail transportation exactly as if they were two entirely disconnected—indeed, even mutually repugnant—things. On the contrary, they are as closely related to each other as the right leg and the left leg of the human body are as respects the process of locomotion. "Male and female created He them," and not more closely associated in intimacy are man and woman than water and rail transportation.

Of what avail is your barge line on the Mississippi River, of what value is your Panama Canal intercoastal fleet if, when they have unloaded their cargoes, there are no railroads to receive them and to bear them away and to distribute them over the face of our vast continent? And of how limited significance would those agencies be if there were no great railway lines to bring cargoes to them, whether along our inland waterways or our Atlantic seaboard or our Pacific seaboard?



Rail transportation is the indispensable supplement of water transportation, as water transportation is the indispensable supplement of railroad transportation. They are as closely related as cylinder and piston or the two blades of a pair of scissors, or, to change my figure, as the Siamese twins. If you inflict a wound on one, you inflict a wound on the other. The prosperity of both can be secured only by preserving with the proper degree of discretion the nexus between them. That is what the framers of the transportation act realized when they conceived and drafted that act, and that is what the Interstate Commerce Commission forever bears in mind when it comes to deal with competition between railway lines and water lines.

If water lines have usually slid back when brought into competition with railway lines, that is not the fault of the transportation act or of the Interstate Commerce Commission. As respects cheapness, water transportation unquestionably enjoys a very great advantage over rail transportation. The transcontinental railroads of this country will always experience difficulty in competing with the intercoastal lines that ply through the Panama Canal. Maritime agencies of transportation are free from many elements of cost from which railway agencies of transportation are not exempt. Maritime lines of transportation involve no cost in the beginning but the initial cost of constructing the vehicles of commerce themselves. Their roadbeds are not made with pick or shovel; they are made by the generous rains that descend from the heavens and swell the volume of our rivers and find their way to the sea. Nor have they any ties or steel rails to lay. But so far water transportation upon our inland waterways has been unable successfully to compete with our railway lines because of their intrinsic inferiority in some respects as means of transportation.

The American people are so constituted that they will always willingly pay more for a superior service than for an inferior service, whether the service is a transportation service or an agricultural service or any other kind of service. There is a celerity, a certainty, an efficiency about railway transportation that does not mark inland water transportation. Consequently the American people, other things being equal, are ready to pay somewhat more—the differential is as much as 7 per cent—for railway transportation than for water transportation.

Mr. GOODING. Mr. President, will the Senator yield?

Mr. BRUCE. Yes; certainly.

Mr. GOODING. I quite agree with the Senator in what he said about the superiority of railroad service. It is more desirable in every way. I want to ask the Senator, with all the advantages possessed by the railroads, about which there is no question, why should they be given violations of the fourth section, then, to meet water transportation? I will agree with the Senator that the people want to use railroads, and do use them wherever they can. Then why would the Senator permit the railroads to indulge in violations of the fourth section to destroy water transportation?

Mr. BRUCE. I will come to that in a moment.

Railroad trains do not have to be piloted over river shoals or river obstructions of any kind. They do not have any upstream journey to retard their progress.

Aside from that, as we all know, so highly organized and systematized have railroads in this country become, with such consummate sagacity and foresight are they managed, that their movements can, by no very bold figure of speech, be compared with the rhythmical movements of the planetary bodies in the skies. The most efficient mechanical instrument that was ever devised by the wit of man is the American railroad. It pays higher prices for everything that it buys than any other railroad in the world; it pays higher wages to its employees than any other railroad in the world; and yet it contrives to carry passengers and freight at the lowest rates in the world.

The American railroad is the very archetype—certainly when let alone by predatory financiers—of economy, of efficiency, of administrative wisdom. The difficulty that inland water lines experience in competing with it is due to the same sort of superiority on the part of our railroad system that we find in the Standard Oil Co. in relation to its rivals. The Standard Oil Co. does not receive any tariff favors of any kind or any general legislative privileges of any sort; and yet, because of the economies that it practices and the extraordinary ability with which its operations are conducted, independent concern after independent concern has found it impossible to compete with it.

As I look at it, every time that the Government attempts to put inland water transportation in this country on a footing of parity with railroad transportation it is simply engaging in the vain business of growing orchids. Was it not only yesterday

that all of us read in the press that last year the receipts of the Erie Canal in the State of New York were but a song in comparison with the enormous indebtedness of \$13,000,000 incurred by it? It looks as if that great work of internal improvement, upon which so much constructive genius was lavished and such vast sums of money expended, will have to go to the scrap heap unless it can be turned to some new use.

Mr. GOODING. Mr. President, will the Senator yield again?

Mr. BRUCE. Certainly.

Mr. GOODING. If the Senator is familiar with the railroad rates that are competing with the New York State Barge Canal, he will find that they are so very low that that is the reason. There are no violations of the fourth section there, but that is the reason why the great State of New York is now asking the Government to take over those canals for operation.

Mr. BRUCE. It is always something. Whenever an inland-water enterprise is under way there is always some excuse or other given for its total want of success.

Mr. GOODING. Oh, well, I am sure the Senator knows how easy it is to put a river out of commission where a railroad parallels it or comes to it at any place with a low freight rate. I will say to the Senator that he is no more anxious to see the railroads in America prosperous than I am. At the same time I say to the Senator that unless water transportation can be permitted to develop this country will very quickly reach a crisis for the lack of transportation. There has been an increase of 440 per cent in freight in this country in the last 30 years, and there has been an increase of only 106 per cent in railroad mileage, so it seems to me that we ought to permit water transportation to develop and not destroy it. That is all I am contending for.

Mr. BRUCE. I want water transportation to develop; but I want it to develop hand in hand with rail transportation, under the supervising authority of the Interstate Commerce Commission.

Nor do I pay any serious attention to all those boastful utterances of General Ashburn in his testimony before the Interstate Commerce Committee with respect to the success of the Federal barge line on the Mississippi River. In point of fact, he admitted himself that the most that he could claim was that at the end of the year it had broken even, and this notwithstanding the fact that the power and the purse of the Federal Government has been behind it since it was established and every artificial prop that could possibly be applied to it for the purpose of supporting its uncertain fortunes has been applied to it.

The very fact that the Government had to originate such a barge line and to take over its operation is a confession of the inherent weakness of inland water transportation as a rival of rail transportation. As for the other river waterways of the country, they really, so far as common carriers are concerned, subserve public purposes of such a limited character that it is hardly worth while for me to linger over them.

Properly adjusted to railroad administration and supervised by the Interstate Commerce Commission, all water transportation, whether inland or intercoastal, could perhaps be made to contribute effectively to the welfare of the American people; but the idea that transportation on our inland waterways has languished or been extinguished simply because of grossly greedy and unconscionable practices of the railway carriers is too flimsy to stand serious examination. Something more than an enactment forbidding rail departures on account of such transportation, assuming dishonesty or error on the part of the Interstate Commerce Commission in granting such departures would be necessary to put inland water transportation on a footing of parity with rail transportation.

As I see it, the quarrel of the Senator from Idaho and the Senator from Nevada is not with the transportation act or the Interstate Commerce Commission; it is with God and nature. They are indignant because Providence chose to give, not the Pacific Ocean but Salt Lake to Utah; not the Pacific Ocean but Snake River to Idaho; and to Reno not "wandering fields of foam" but surrounding fields of sagebrush.

San Francisco is a great city because it sits enthroned upon the strand of the seven seas, with its Golden Gate swung in such a way upon its hinges as to let out the productions of a vast continent, and to let in the commerce of the entire world.

It is a great city for the same reason that Boston is a great city, that New York is a great city, that Philadelphia is a great city, that Baltimore is a great city. In the Pacific it has such a bride as medieval Venice in the height of her commercial prestige had in the Adriatic. It is perhaps but natural that the Senators that I have mentioned should chafe a little because their inland cities do not make the same rapid industrial



progress as San Francisco and Seattle do, but there is nothing, in my opinion, that can be done for them, so far as the alleged grievances which they are now agitating go.

The intermountain country, as compared with the Pacific seaboard, is geographically and physically of such a nature that it can never reasonably hope to have such cities as those which stud our Atlantic and Pacific seaboard or the shores of our Great Lakes or those situated along great rivers that are but mouths of the sea. The most that they can expect is to be considerable inland cities, not great metropolises, mighty emporiums of trade and commerce.

So far from complaining because the Interstate Commerce Commission has the power under the fourth section of the interstate commerce act to fix lower rates to the Pacific coast than to intermediate points, the people of the Intermountain States should realize that circumstances are readily imaginable under which, if our transcontinental railway lines were not allowed such departures, they might be compelled to ask the commission for higher rates at intermediate points.

As time goes on competition between our intercoastal steamship service and our transcontinental railway service might become so acute on the Pacific coast that our transcontinental railway lines might have no choice except to go out of business or to raise their rates at such intermediate points. Our intercoastal commerce through the Panama Canal is steadily increasing, is a very different thing from the handicapped commerce on our inland waterways, and might in time become a menacing rival, indeed, to our transcontinental railway transportation. As I said, the pending bill, if enacted, might prejudice the general welfare of the people of the United States in the highest degree without conferring any real good upon the people of the intermountain country itself.

In point of fact the people of the intermountain country are by no means united in believing that the enactment of the Gooding bill would be beneficial to that region. On the other hand, on the whole, the great business interests on the Pacific coast are opposed to it; and so, on the whole, are the great business interests in the Middle West and in the East and the South. I really was astonished at the tenderness exhibited by the Senator from Nevada for the feelings and interests of our eastern people, when he expressed the solicitude that he did as to what might befall them if this bill did not become a law. They are not in the least concerned about it, except to the extent that they are influenced by the fear that the violation of one of the most salutary principles of the transportation act of 1920 might result in injury to every part of the United States.

Why did not prominent citizens of Boston, of New York, of Philadelphia, of Baltimore, and of interior cities in the United States in the East troop to the committee room of the Interstate Commerce Committee and plead for the passage of the pending bill. With due respect to the Senator from Nevada, so far as I know, there is no substantial sentiment anywhere in the eastern part of the United States in favor of its passage. It is a mere sectional, regional, local bill. It is a mere intermountain-territory bill. Nobody practically is interested in it except the intermountain-territory people.

I will not say that its origin is purely selfish. I have no right to say that; but I do say that its existence is almost, if not entirely, referable to the persistent activity of that people.

When I come to think of it, I am afraid that I ought really to feel a little self-reproach, because I have discussed this bill at such length. Under the circumstances that have developed within the last few hours it seems to me that it ought to be regarded as a matter of purely academic interest.

The power of allowing a departure under the existing Federal laws is, of course, lodged in the hands of the Interstate Commerce Commission, and that commission has just published a decision in which it rejected the applications of our transcontinental railway lines for departures as to all the 47 different commodities covered by those applications. So there is nothing any longer even for the proponents of this bill to fear. The case in which they are interested has been determined by the commission empowered to determine it, and it has been determined in their favor.

Nor is that all. Since 1918 previous applications of the same nature have been made by our transcontinental railroad lines, and in every instance the decision of the Interstate Commerce Commission was adverse to the applicants. Yet, notwithstanding those facts, here are the proponents of this bill asking that the Interstate Commerce Commission be placed in a rigid strait-jacket, so far as its ability to grant departures in the case of water competition is concerned. Is there any reason for such a request?

The Interstate Commerce Commission was created in 1887, 39 years ago. I have seen it stated that since that time it has dealt with no less than 25,000 departure cases. The lowest estimate that I have ever seen was 12,000, and it can be safely affirmed that it has exercised the discretion involved in those cases with the same degree of success as in cases arising under other sections of the interstate commerce act than section 4.

I must say that because of the hasty criticism that I have heard in this body of this commission, I find it difficult to repress a feeling of at least passing impatience. I speak deliberately when I say that next to the Supreme Court of the United States, no political agency which forms a part of the Federal Government is held in a higher degree of confidence and respect than the Interstate Commerce Commission. There are names connected with its membership which can truly be declared to be illustrious names. There are men who have participated in its orders who would have graced, adorned, or honored the bench of the Supreme Court of the United States itself. Among them was no less a person than Judge Thomas M. Cooley, one of the most famous jurists ever known to American jurisprudence. Among the other members of the commission have been Mr. William R. Morrison, of Illinois, Mr. Knapp, Mr. Prouty, and Mr. Harlan, all men who achieved an uncommon degree of celebrity by the manner in which they discharged their duties as members of the commission.

Are we to cripple the jurisdiction of such a commission in a most important and vital particular? Are we to deprive it of a discretion which it has not only always honestly exercised, but has exercised in a manner calculated to impart the highest degree of satisfaction even to the breasts of the proponents of the pending bill? Is that bill to be but the beginning of an effort first by one legislative enactment and then by another to nibble away the authority of the Interstate Commerce Commission?

What reason, I ask, is there for believing that its members will not in the future as in the past exercise such discretion or authority as may be vested in them in a just and dispassionate spirit and with the full measure of ability and sagacity their office requires?

While I am referring to Judge Cooley, I do not know any better thing that I could do than to turn to the luminous words in which he expounded the high public need for a flexible fourth section in the interstate commerce act. He said:

It was fairly shown before us that instances exist, and may be found, along the route of petitioner's lines in the States of Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Louisiana, where the competition of waterways forces down the railroad rates below what it is possible to make them at noncompetitive points and still maintain the roads with success or efficiency. The reason is that the carriers by water can perform the service at very much less cost than the carriers by land. The general fact is that railroad rates for the transportation of property must approximate closely those which are made between the same points by steamer, and the steamer rates are generally, if not invariably, much below what the railroads can afford to accept upon all their business.

In such cases, if competition is maintained, more must be charged at interior points than can be obtained at the points of competition; and if the competitive rates are such as are productive of some gain, however slight, the noncompetitive points are likely to receive indirect advantage therefrom, while the competitive points have the larger and more direct benefit, and are afforded a choice of agencies in transportation whose rivalry may fairly be expected to keep the cost down to a minimum. The interior points may have no ground for complaint in such a case, provided the rates they are charged are in themselves just and reasonable, even though the fact be that in some cases more is charged for the short than for the long haul over the same line in the same direction. This general fact is recognized the world over; and of English railways it has been often remarked that some of them would be deprived of much of their value if they were not allowed to meet water competition by such concessions at the points of contact as the competition would compel.

In another place Judge Cooley said:

Every railroad company ought, when it is practicable, to so arrange its tariffs that the burden upon freights shall be proportional on all portions of its line and with a view to revenue sufficient to meet all the items of current expense, including the cost of keeping up the road, buildings, and equipment, and of returning a fair profit to owners. But it is obvious that, in some cases, when there is water competition at leading points, it may be impossible to make some portion of the traffic pay its equal proportion of the whole cost. If it can then be made to pay anything toward the cost, above what the taking of it would add to the expense, the railroad ought not, in general, to be forced to reject it, since the surplus, under such circumstances, would be profit. As has been tersely said by M. de la Gournerie, formerly inspector general of bridges and railways in France, a railroad "ought not to neglect any traffic of a kind that will increase its receipts more than its expenses";



and long-haul traffic which can only be had on these terms may sometimes be taken without wronging anyone, when to carry all traffic, or even the major part of it, at the like rates would be simply ruinous.

Could it be possible in the same number of words to present with more nervous precision and consummate clearness the reasons which led the framers of the interstate commerce act to make the fourth section of that act not an absolutely rigid and inflexible but a flexible and elastic provision?

Now, in conclusion, Mr. President, let me call attention to the fact that the exercise of the discretion of the Interstate Commerce Commission under the fourth section of the interstate commerce act is most carefully safeguarded by certain muniments of security to which I feel I should call attention.

In the first place, the existing law declares that if a railway company because of water competition is allowed to charge a lower rate for a longer distance than for a shorter, and afterwards applies for the privilege of increasing the rate, it must suggest some other consideration in support of its application than the mere elimination of the water competition. That is one safeguard.

Then, the existing law further provides that a departure shall not be granted to a railway company to meet merely potential water competition. That is another safeguard.

Then, the existing law provides that the lower rate authorized by the departure must be a compensatory rate; that is to say, not a mere "out-of-pocket" rate, but an "out-of-pocket-plus" rate; in other words, there must be an "out-of-pocket" rate with a considerable addition of a compensatory character.

Need I point out the fact that this provision has a direct relation to what I have already said when I declared that circumstances are imaginable under which, if our transcontinental railway lines were not allowed to charge a lower rate to the Pacific coast than to intermediate points, they might be compelled to increase their rate to the intermediate points? The ability of a railroad to run its road and comply with all its obligations is to be measured, of course, by the entire amount of its revenue from every source; and if it can gain some additional profit by virtue of a departure that it would otherwise not gain at all, who is hurt by its being permitted to make the departure?

Following up the safeguarding provisions of the existing law, the Interstate Commerce Commission has precisely laid down the principles by which it will be governed when it is asked to grant a departure to a railroad company for the purpose of meeting water competition. The rate must be a compensatory rate, a rate substantially additional to a mere "out-of-pocket" rate. It must be of such a nature as not to be oppressive to legitimate water transportation, it must be of such a nature as not to impose a burden upon any other kind of traffic, and it must be of such a nature as to enable the railroad company to earn the return upon its capital value that it is allowed to earn under the provisions of the transportation act. Moreover, under the provisions of the interstate commerce act the rate must not be unreasonable or discriminatory or of a character to give an advantage or preference to one person, or one locality, or one kind of traffic over another.

So, Mr. President, you will see that the discretion which is vested in the Interstate Commerce Commission in the matter of departures is not a mere arbitrary, unrestrained discretion; it is a bitted and curbed discretion. It is surrounded by statutory restrictions which are admirably qualified to secure a prudent and wise exercise of official discretion. Under those circumstances I ask how can this bill possibly be enacted? Only because the subject of departures is a more or less arid and abstruse subject; and the members of this body have not been willing during the last day or so to keep their seats and to be enlightened with reference to the true meaning and significance of the fourth section of the interstate commerce act. Instead of the Representatives of this great land outside of the intermountain country giving the closest and most sedulous consideration to the pending bill—that is to say, the Representatives of the communities that contain the great mass of the business and prosperity of our country—they have allowed the Representatives of the intermountain country to indulge in a scope of discussion which has extended all the way from an utterly false conception of the relations of the bill to the interests of their own people as well as to the interests of the remainder of the people of the United States to what I deem a totally unjustifiable attack upon the character and the competency of the members of the Interstate Commerce Commission.

Mr. GOODING. I ask now that the unfinished business, being Senate bill 575, be temporarily laid aside.

The VICE PRESIDENT. Without objection, it is so ordered.

#### INDEPENDENT OFFICES APPROPRIATION BILL

Mr. WARREN. I ask that the Senate may now resume the consideration of the independent offices appropriation bill, which was under consideration yesterday.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 9341) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1927, and for other purposes.

Mr. WARREN. Mr. President, before proceeding with the bill I wish to say that there was some confusion yesterday, and while I asked that there be allowed to go over until to-day the item commencing at the foot of page 14, the clerk at the desk understood that the reference was to the item contained in lines 9 and 10 on that page, and justly so, because the Senator from Tennessee had questioned that item and had finally, although I think it escaped the attention of the clerk, consented to it. Inasmuch, however, as that mistake was made on the record, I ask that the matter which I send to the desk may be read to show the origin of the oil commission, what it has done, what our obligations are, and in support generally of the proposed continuance of the appropriation.

The VICE PRESIDENT. Without objection, the paper will be read.

The Chief Clerk read as follows:

#### FEDERAL OIL CONSERVATION BOARD

No money has been expended to date.

No specific authority of law other than contained in the \$50,000 appropriation.

Board is composed of Secretaries of Interior, Commerce, War, and Navy.

Has been functioning for over a year.

A complete survey has been made of oil supply, and a great amount of detail secured.

Public hearings have been granted oil concerns, users of oil, etc.

This work will result in three reports on—

Domestic concerns (will be made before Congress adjourns, in all probability);

Foreign conditions;

Substitutes for gasoline and petroleum.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee on page 14, lines 9 to 13.

The amendment was agreed to.

The VICE PRESIDENT. That completes the committee amendments.

Mr. COPELAND. Mr. President, I send to the desk an amendment to the bill, and I hope the Senator in charge of the bill will not raise the point of order until I can say a few words about it.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 32, line 16, after the word "claims," it is proposed to add the following:

*Provided further, That no part of the moneys appropriated or made available in this act for the United States Shipping Board Emergency Fleet Corporation shall be used or expended for the construction, purchase, acquirement, repair, or reconditioning of any vessel or part thereof or the machinery or equipment for such vessel from or by any private contractor, that at the time of the proposed construction, purchase, acquirement, repair, or reconditioning can be constructed, purchased, repaired, or reconditioned when time and facilities permit in each or any of the navy yards or arsenals of the United States, at an actual expenditure of a sum less than that for which it can be constructed, purchased, acquired, repaired, or reconditioned otherwise.*

Mr. WARREN. Mr. President, that is legislation of the most pernicious character; and I make the point of order that it is legislation.

Mr. COPELAND. I ask the Senator to withhold raising the point of order for just a moment.

The VICE PRESIDENT. Does the Senator withhold his point of order?

Mr. WARREN. Points of order are to be decided without debate; but if the Senator wishes to explain his amendment—

Mr. COPELAND. I hoped the Senator would withhold raising the point of order.

Mr. WARREN. I am waiting for the Senator. Proceed.

Mr. NORRIS. Mr. President, will the Senator from New York permit me to interrupt at that point?

Mr. COPELAND. I yield to the Senator.

Mr. NORRIS. Before the Chair rules on the point of order I should like to be heard on it. I recognize that it is a matter on which the Chair can rule without listening to argument; but in my judgment this amendment of the Senator from New



York is not subject to a point of order. I have not the remotest idea that it is. It seems to me there is not any question about it.

Mr. GLASS. Mr. President, the point of order has been made against this amendment now for three successive years, and each time the Chair has decided that it is subject to a point of order. I have to leave the Chamber. I can not participate in any discussion as to whether or not the point of order lies. It is the same old thing over and over again.

Mr. NORRIS. It is in the Navy bill.

Mr. GLASS. No; it is not in the Navy bill.

Mr. WARREN. The Navy bill is an entirely different bill from this. It is entirely too ridiculous to think of as to this particular bill.

Mr. NORRIS. Yes; but the facts are that the ships of the Navy go across the ocean the same as these do; but it makes no difference. Even though it were ridiculous, the parliamentary situation is not affected by it. It is a straight limitation on an appropriation, and that is always in order.

Mr. WARREN. Have I the right to make the point of order?

Mr. NORRIS. Oh, I certainly do not question the Senator's right to make the point of order.

The VICE PRESIDENT. Does the Senator make the point of order?

Mr. WARREN. I do.

The VICE PRESIDENT. The Chair holds the point of order well taken.

Mr. NORRIS. Now, Mr. President, I desire to make a point of order against the bill. The very provision to which this proviso was offered as an amendment, if this is subject to a point of order, is likewise subject to a point of order. I make the point of order on the proviso on page 32, commencing on line 7 and ending on line 16.

Mr. WARREN. Those are matters that have already been agreed to.

The VICE PRESIDENT. The Chair will rule that a part of the House text of the bill can not be attacked by a point of order.

Mr. NORRIS. Then, Mr. President, I make the point of order against the Senate committee amendment on page 14, commencing on line 10 and ending on line 13. It was admitted here in the debate yesterday—

The VICE PRESIDENT. That has already been agreed to.

Mr. GLASS. Mr. President, do not those points of order come too late?

The VICE PRESIDENT. Yes; the amendment has been agreed to.

Mr. COPELAND. Mr. President, a parliamentary inquiry. We are now in Committee of the Whole. When the bill gets into the Senate, can these points be raised?

The VICE PRESIDENT. The points can be raised in the Senate.

Mr. COPELAND. There are several of them.

Mr. NORRIS. Why, this bill is full of them. On almost every page of it there are provisions exactly similar to this one that the Senator from New York has offered as an amendment. It is full of the same kind of provisos. They are limitations on appropriations, every one of them, as this is.

Mr. WARREN. There are no such provisos in this bill and no such provisos in any other bill.

Mr. GLASS. This proviso is not in the Navy bill, if I may say so. Some part of it, in a very inoffensive way, is in the Navy bill.

Mr. COPELAND. Mr. President, it seems to me very clear that in the amendment on page 32, offered by the committee, lines 22 and 23 are plainly open to a point of order:

*Provided, That no expenditure shall be made from this sum without the prior approval of the President of the United States.*

That is not the law now. That is new legislation.

The VICE PRESIDENT. The Chair suggests that the point of order be made in the Senate. This amendment has been agreed to. Are there any additional amendments?

Mr. COPELAND. Mr. President, I reserve the right to offer in the Senate the amendment to which I have referred.

The VICE PRESIDENT. The Senator has that right without reservation.

Mr. KING. Mr. President, I have pending before the Committee on Finance, of which I am a member, a bill for the repeal of the law providing for the Tariff Commission. I regret that the Finance Committee have not considered that bill, and of course my regret is accentuated because they have not reported favorably upon it.

The Tariff Commission was designed to serve a useful, indeed a necessary, purpose. Those who have had anything to do with

drafting revenue laws, particularly tariff measures, can appreciate some of the problems involved in connection with that important task.

I think it may be said that the competitive system, if I may apply that term to tariff legislation, or a competitive tariff, is the one which a major portion of the Senate and the House will approve. Many of our Republican friends, of course, demand practically a prohibitive tariff. They want an embargo upon everything that will come in competition with domestic production, though so doing gives to the domestic producer a monopoly and gives him the power to exploit the people.

Recently we have had before us the aluminum case. The evidence discloses that there is a tariff on aluminum; that there is a monopoly in the manufacture of aluminum and in the production of the fabricated articles which are made from aluminum. The Tariff Commission was created while the Democrats were in power, as I recall, but it was not a partisan measure. It was advocated by Mr. Roosevelt, by progressive Republicans, by students of our economic and our industrial problems. They appreciated the fact that in drafting tariff legislation it was important that the Committee on Ways and Means of the House and the Finance Committee of the Senate should know something of the cost of production at home and the cost of production abroad so that tariff duties might have some relationship to the cost of production, and so, as I have indicated, the Tariff Commission might serve a highly useful purpose.

For the past two or three years, however, the Tariff Commission has ceased to function as a useful or a necessary agency of the Government. The only duty which it is now discharging, or substantially the only duty which it is discharging, is in connection with the flexible provision of the tariff act. It is using the powers which were conferred upon it under the last tariff law for the purpose of raising the already high duties to a higher level than those laid in the Fordney-McCumber tariff law. In nearly every case where a finding has been promulgated the rate has been raised. No one can say that the Fordney-McCumber tariff law was not the highest tariff act that was ever passed in the United States. It was prohibitory in many instances. It was a practical embargo with respect to many dyes, pharmaceuticals, and chemicals. Notwithstanding the enormous duties provided in that bill, we attached the flexible-tariff provision, by which the President of the United States might increase the duties to a maximum of 50 per cent.

I think that provision is unconstitutional. It was, of course, an abdication of the duties, responsibilities, and powers of Congress to executive agencies and to the President of the United States. I think it was a very bad, a very dangerous precedent. The Tariff Commission, Mr. President, by reason of its recent conduct or misconduct, whichever term may be employed, has ceased to function as a necessary agency of the Government.

I regret that a motion will not carry to strike out the entire appropriation. If I thought it would, I should very quickly offer an amendment to strike out the entire appropriation.

There are, as I understand, two members of the Tariff Commission now serving without the advice and consent of the Senate. Indeed, as I understand, their names have not been transmitted to the Senate, though they have been serving upon the commission for some time.

I can not understand the view of the President of the United States—and I speak with all due respect. Recess appointments have been made, but when Congress has met he has not transmitted the names of his appointees to the Senate for confirmation. Certainly it was never contemplated by those who framed the Constitution of the United States that appointees of the President might serve without confirmation, except where a vacancy occurred by death, resignation, or otherwise, when Congress was not in session. It is manifestly the duty of the President of the United States to transmit to Congress as soon as Congress meets where a vacancy has occurred during the recess the name of any person who has been appointed by him to a position where confirmation by the Senate is required by law.

I am told, although I have not had time to look up the facts, that there have been a few, and a very few, instances where appointments have been made by the President during the adjournment of Congress, and when Congress met the names were either sent in and rejected, and then after Congress adjourned they were appointed again, or they have not been sent in at all, and when Congress adjourned a recess appointment was given. Obviously in either case that is a violation of the spirit if not the letter of the Constitution of the United States. Where the President names an individual ad interim for a position where confirmation is required by the Senate the Sen-



ate meets, and the name is not transmitted to the Senate, and when the Senate adjourns that person receives a recess appointment to serve again until Congress meets, I think the President has gone beyond his authority. If that were legal, it is obvious that at least during the four years or the eight years of a President's tenure of office he might continue a person in office without that person ever having been confirmed. That, I say, is illegal. It may not be defended in law, nor can it be defended in morals.

I say that it is equally against the spirit if not the letter of the Constitution of the United States for the President, where he has made an appointment ad interim and the Senate has met and failed to confirm, to give another recess appointment after the adjournment of Congress. That, I repeat, may not be defended.

I ask that the clerk may read the amendment which I offer.  
The VICE PRESIDENT. The clerk will read the amendment.

The LEGISLATIVE CLERK. On page 30, in line 12, strike out the period and add the following additional proviso:

*And provided further,* That no part of this appropriation shall be used to pay the salary of any member of the United States Tariff Commission who is presently holding his office under a commission which was granted during the recess of the Senate and which will expire at the end of the present session of the Senate, unless said member in the meantime shall have been appointed a member of the commission by and with the advice and consent of the Senate.

Mr. KING. Mr. President, this amendment provides that any member of the Tariff Commission now holding his office under a commission issued during the recess of the Senate and which will expire when the present session ends shall not receive any part of the appropriation unless, before adjournment, he shall have been confirmed by the Senate.

I have briefly referred to the fact that the Chief Executive has sometimes violated what I conceive to be the spirit, if not the letter, of the Constitution by reappointing persons who had failed of confirmation by the Senate or whose names had not been sent to the Senate after a recess appointment, and who upon the adjournment of Congress were again named for the same position.

The amendment just offered relates to members of the Tariff Commission who were appointed during the recess of the Senate and whose names have not been transmitted to the Senate for confirmation and who in all probability the Senate will have no opportunity to consider prior to the adjournment of Congress. It seems to me that this amendment should receive the unanimous approval of the Senate.

The power of the President to appoint officers is not absolute. He may nominate, but the nominee may not be—

appointed—

Except—

by and with the advice and consent of the Senate.

The Constitution clearly places a limitation upon the power of the President to fill official positions. There is no limitation upon his power to nominate, but, as stated—

Ambassadors \* \* \* and all other officers of the United States—

Must receive the Senate's approval. However, if a vacancy happens—

during the recess of the Senate—

The President shall have power to fill the same—

by granting commissions which shall expire at the end of their next session.

It was not intended by the framers of the Constitution that officers of the United States should serve indefinitely without favorable action upon their nomination by the Senate. If a person shall have been granted a commission during a recess, it is the duty of the President, in my opinion, to transmit the name of such person to the Senate when it convenes or to nominate some other person for the same position and ask the advice and consent of the Senate to the appointment. There can be no doubt as to the effect of the failure of the President to transmit to the Senate the name of a recess appointee at the expiration of the next session of the Senate following the recess appointment. The person holding the commission is automatically deprived of all authority, and the office becomes vacant. If the President transmits to the Senate the name of a person holding a recess commission, and the Senate refuses to confirm the appointment, then the office becomes vacant. It would seem that the President lacks authority to nominate for the same position the same person who had been rejected by the Senate. However, there are instances where that has been

done, and the Senate during the same session has again acted upon the nomination. Quite recently Mr. Charles Beecher Warren was nominated as Attorney General of the United States. The Senate refused to advise and consent to the appointment. Within a few days thereafter the President again nominated Mr. Warren and the Senate promptly rejected him. The right of the President to make the second nomination was not openly challenged, although there was some doubt as to the right of the President to make the second nomination, and the view was taken by some that the course of the President was injudicious if not improper.

A proper interpretation of the Constitution, it seems to me, can not uphold the right of the President to give a recess appointment to a person who has been rejected by the Senate. If the Senate rejects a recess appointment, and the President, after adjournment of the Senate, again appoints the same person to the same position, it would seem to be a palpable evasion of the spirit as well as the letter of the Constitution. To hold otherwise would mean that the rejected appointee might serve indefinitely. The second recess appointment would carry him over until the adjournment of the next session of the Senate, and another appointment then made by the President would be operative until the termination of the next session of the Senate. If this position is sound, then a person could serve for many years without ever being confirmed. There would be an imperceptible space of time between the termination of the recess appointment following the adjournment of the Senate and the reappointment which might be made a few seconds later by the President.

Manifestly, the constitutional provision that the appointment of public officers must be with the advice and consent of the Senate can not be frittered away by subtle or devious devices. The Constitution contemplates that the stamp of approval shall be placed upon all public officers referred to in section 2 of Article II of the Constitution.

A treaty which has been rejected by the Senate can not be vitalized and made operative by any subsequent act of the President. He may negotiate as many treaties as he desires, but to be valid, or to become the "supreme law of the land," they must be ratified by two-thirds of the Senate present and concurring when action is taken by it. The power to grant commissions during the recess of the Senate was deemed necessary in the interests of public business, but it was never contemplated that this power to fill vacancies happening during the recess of the Senate constituted a grant of power to the President to authorize persons to hold public positions for indefinite periods without the advice and consent of the Senate.

To hold a contrary view would be to nullify the Constitution and pervert it to an improper purpose. Congress has been in session since December. Two vacancies occurred in the United States Tariff Commission during the summer of 1925. These vacancies were filled by the President, who had the authority to grant commissions to his nominees, which would be valid until the end of this session of the Senate if no other appointment were made in the meantime. I submit that it was the President's duty, as I have heretofore stated, as soon as Congress met in December to place before the Senate for their action the names of those who were given recess appointments or to nominate other persons for the same positions. That has not been done, and the two members of the Tariff Commission are still serving without having been confirmed by the Senate.

No one, in my opinion, can justify this procedure. It was not the intention of those who drafted the Constitution that officials should serve who could not be confirmed by the Senate. It was not intended that the President should act capriciously or arbitrarily, or with absolute power in the matter of appointments. The power to nominate is not the power to completely invest an individual with all the insignia and authority of office. There must be a concurrence of action by the President and the Senate to invest certain public officers with authority to act, the exception being only where a vacancy occurs during the recess of the Senate.

The long delay in transmitting to the Senate the names of the persons receiving recess commissions for such action as the Senate in its judgment might determine to be right and proper would seem to indicate that the Senate may adjourn without having an opportunity to confirm or reject, for the positions named, the persons to whom reference is made. Suppose that the President declines or neglects to send the names of these individuals to the Senate for its action during this session, and upon adjournment of Congress the President, assuming that the authority of these persons is terminated, and that vacancies exist in the Tariff Commission, again gives them recess appointments and commissions to "expire at the end of" the next session of the Senate; will any Senator contend that under such circumstances such appointments would



be valid and that the persons named could legally hold the positions for which they were named?

As I have heretofore stated, if such appointments were legal, then the appointees named could serve until the end of the next session of the Senate and again be reappointed, and thus continue in office as long as they lived, provided the succeeding Presidents continued to reappoint them. Such procedure would be farcical and would nullify the provisions of the Constitution which requires the approval of the Senate. The amendment which I have offered seeks to prevent such an eventuality. It provides that the commissioners now holding recess appointments may not receive any salary after the adjournment of the present session of the Senate if prior to that time they have not been appointed to their respective positions as members of the Tariff Commission "by and with the advice and consent of the Senate."

Mr. MOSES. Mr. President, I ask the Senator if it is not provided by statute now that pending confirmation, an officer may not draw salary, and that if he is not confirmed, he can not draw salary except by special act of Congress?

Mr. WARREN. I understand that is true. We have several times been called upon to make appropriations to cover the time some appointee has served when he had been appointed, but was not confirmed by the Senate.

Mr. MOSES. May I call the attention of the Senator from Utah to the Rublee case, which was more or less of a cause célèbre here, in which case I think a special appropriation had to be made to provide the salary of Mr. Rublee, who had served some months and then was denied confirmation?

Mr. KING. The amendment which I have offered deals with a different situation than that typified by the Rublee case. I am repeating when I say that the amendment before us seeks to prevent salaries being paid to persons now serving under recess appointments, as members of the Tariff Commission, if their names are not submitted to the Senate before its adjournment and they should attempt thereafter to serve upon the same commission under the present or a new appointment at the hands of the President.

Senators will recall that in 1920 Mr. Ford and Mr. Duncan were nominated as members of the Interstate Commerce Commission, and during the same session Mr. Potter and Mr. McCall were named for positions upon the Tariff Commission. No action was taken by the Senate prior to adjourning. Recess appointments were given the persons named by the President, but my recollection is that they were not paid their salaries until they were confirmed.

Reference has been made by the Senators from New Hampshire and Wyoming to the existing law, which, if I understand them, they regard as being as broad as the amendment which I have offered. I do not agree with them. During the reconstruction period, and while the controversy with President Johnson was raging, the Republicans enacted a number of measures seeking to curb the power of the President.

Section 1671 of the present Revised Statutes of the United States contains one of the provisions of the statute enacted at the time to which I have just referred. It reads as follows:

No money shall be paid from the Treasury as salary to any person appointed during the recess of the Senate to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

In the same act, as I recall, there was another section which reads as follows:

The President is authorized to fill all vacancies which may happen during the recess of the Senate by reason of the death or resignation or expiration of term of office by granting commissions which shall expire at the end of their next session thereafter. And if no appointment by and with the advice and consent of the Senate is made to an office so vacant or temporarily filled during such next session of the Senate, the office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until it is filled by appointment thereto by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

The section last referred to was repealed in 1887.

Applying the proper rules of statutory construction to laws in *paria materia*, I am inclined to think the first section is to have a narrower interpretation than if it had been enacted separately. It will be observed that under the repealed section the President may make recess appointments, but the position so filled is regarded as being temporarily filled only until

and during the next session of the Senate, and if the appointment is not confirmed by the Senate, then—

The office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until it is filled by appointment thereto by and with the advice and consent of the Senate.

If that statute were now in force, then the amendment which I have offered would be supererogatory. Under this statute, upon the adjournment of this session of the Senate the two members of the Interstate Commerce Commission now serving under recess appointments would be shorn of all power unless before adjournment they were confirmed by the Senate; and the two positions or offices which they are now filling would—

remain in abeyance, without any salary, fees, or emoluments—

until the next session of the Senate, and the appointment of their successors by and with the advice and consent of the Senate.

It would seem, under all rules of statutory construction, that the provisions of this section, which, as stated, has been repealed, are not to cover cases or meet situations designed to be reached by section 1761, to which I have just called attention.

It can not be said that section 1761 is free from ambiguity, and particularly if it be conceded that it was not intended to meet conditions such as those designed to be covered by the repealed section. It will be noted that under the terms of section 1761—

no salary shall be paid to any person appointed during the recess of the Senate to fill a vacancy if the vacancy existed while the Senate was in session.

The question arises whether a "vacancy" in the Tariff Commission has existed while the present Senate has been in session. The vacancies happened during the recess of the Senate and the President filled them "by granting commissions," which will not expire until the end of this session of the Senate.

If the commissions granted by the President to the two commissioners operated to fill the vacancies, then there were no vacancies in the Tariff Commission when Congress convened in December, unless the meeting of the Senate ipso facto nullified the commissions and created vacancies. In my opinion such was not the case. The commissioners holding appointments under commission issued by the President did not cease to be both *de facto* and *de jure* officials when Congress convened, nor has anything occurred since then to deprive them of their offices or of the authority pertaining to the same.

It may be contended that within the meaning of the statute there are now two vacancies in the Tariff Commission; that they have existed and still exist while the Senate was and is in session, and that the law requires these positions to be filled by and with the consent of the Senate and if they are not confirmed, they can not be paid any salaries after the end of the present session of the Senate.

Assuredly the section is not sufficiently certain as to justify the defeat of the amendment which I have offered, based upon the ground that section 1761 will prevent salaries being paid to the two appointees of the President who have not yet been confirmed if Congress should adjourn without their confirmation. Congress has the right to limit appropriations made, and it has the authority to say that no part of the appropriation carried in the pending measure for the Tariff Commission shall be used to pay the salaries of commissioners not confirmed by the President, and whose names have not been and will not be sent to the Senate, and who are holding office under recess appointment.

Mr. NORRIS. In the Rublee case the name was actually sent to the Senate and rejected by the Senate. This amendment would not be applied to that case, as I understand. The object to be accomplished by the amendment offered by the Senator from Utah is to prevent the President from making a recess appointment, and then when Congress convenes never sending the name to the Senate at all, the appointment will expire under the law when Congress adjourns, and then he immediately makes another recess appointment of the same man, and may keep on doing so *ad libitum*.

Mr. MOSES. How many instances of that character have occurred?

Mr. NORRIS. I do not know. That is the object of this amendment, as I understand it.

Mr. MOSES. Is the Senator from Utah reaching at a real evil or at an evil which he thinks may arise?

Mr. KING. My amendment is not permanent legislation and would not be regarded as substantive law. If it was, it



might be subject to a point of order as not being proper upon an appropriation bill. The amendment, however, does limit the appropriation carried in the bill for the Tariff Commission and prevents the application of any part of it to the payment of the salaries of persons under the conditions which I have discussed. The amendment will not reach any cases or any evils except those to which I have called attention, and it relates only to two commissioners now holding recess appointments.

I have shown that these persons were named by the President months ago to fill vacancies upon the Tariff Commission; that Congress has been in session since December and their names have not been sent to the Senate; that the Senate will soon adjourn and there is nothing to indicate that the President intends to send their names to the Senate in order that it may exercise its constitutional power in determining whether it will advise and consent to their appointment or reject the same. I think the situation has already developed, and, to use the Senator's word, the "evil" has already arisen.

Mr. MOSES. Personally, I prefer to cross bridges when we reach them.

Mr. KING. I think the bridge has been reached, and I believe that the Senate should now exercise its undoubted authority and declare that no salary shall be paid to these appointees of the President who, in my opinion, would be unauthorized to occupy the positions which they now hold one second after the end of the present session of the Senate.

Mr. WILLIS. I was about to suggest to the Senator, though I am not able to cite the case at the moment, a case during the administration of President Cleveland, where an appointment was made which, under the constitutional provision, would expire at the end of the next session of the Senate, and then after Congress adjourned the same person was appointed again. I think it ran on to the third or fourth degree. I can not cite the case, but I know there was such a case.

Mr. KING. I do not recall the case referred to by the Senator, but I do remember a number of cases which I think are similar to the one just referred to.

In President Johnson's time a number of postmasters were given recess appointments, and upon the convening of the Senate their names were submitted, but the Senate rejected a number of them. The Attorney General, Evarts, held that the President could again give a recess appointment to these rejected appointees. My recollection is that when Hayes was President a vacancy was created in the office of paymaster of the Army. The same day the Senate adjourned. The following day the Senate was convened in extra session, and adjourned without acting upon the nomination sent to the Senate to fill the vacancy.

There are a number of cases where vacancies occurred during sessions of the Senate and where nominations to fill such vacancies were made by the President and sent to the Senate during the same sessions and where without taking action upon such nominations recess appointments were made by the President after the adjournment of the Senate.

My recollection is that there have been instances where recess appointments have been made by the President, and upon the convening of the Senate it has been asked to advise and consent to the recess appointments. Upon rejecting the nominations the same persons were given recess appointments again upon the adjournment of the Senate. I have indicated that, in my opinion, this course was improper and violated the spirit if not the letter of the Constitution. I feel that it is an evasion of the Constitution and is a denial of the right and power of the Senate to participate in the selection of Federal officials.

The framers of the Constitution knew the evils of unlimited Executive power to fill important official positions. They knew the influences which had been brought to bear to secure important positions and places of power in government; they were familiar with the corrupt methods employed to secure appointments at the hands of kings and rulers. They, therefore, determined to place a check and curb upon the President, and to limit his authority to nominate officials, or, in the language of the Constitution, to appoint ambassadors and other officers by and with the advice and consent of the Senate.

The Senator states that a Democratic President, after an appointee had been rejected by the Senate, again appointed him upon the adjournment of the Senate.

Mr. President, I have stated that there are a number of precedents for this course, but in my opinion this course is wrong no matter what President pursues it.

Mr. NORRIS. I think the Senator from Ohio will find that names were sent to the Senate and rejected and that that went on for some time.

Mr. MOSES. In that event the nominees were rejected and could not draw any salary.

Mr. NORRIS. No. They could not draw any salary.

Mr. KING. Mr. President, I am inclined to think that under section 1761 that if a vacancy occurs while the Senate is in session and the President nominates a person to fill the vacancy and the Senate refuses to confirm the nomination, then the person holding a recess appointment is not entitled to the salary provided by law. But because section 1761 is susceptible of different constructions, and the practical certainty that the recess appointees now serving upon the Tariff Commission will not have their names submitted to the Senate before adjournment, and will receive another recess appointment, I think it is the duty of Congress to prevent the execution of a plan which nullifies the provisions of the Constitution and deprives the Senate of the authority which it should exercise, and which it is necessary that it should exercise, for the public welfare.

Mr. BLEASE. Mr. President—

The VICE PRESIDENT. Does the Senator yield to the Senator from South Carolina?

Mr. KING. I yield.

Mr. BLEASE. If the Senator from Ohio who cited the instance in Mr. Cleveland's administration will look a little further he will find such an instance in Mr. Roosevelt's administration, where he kept a colored collector of customs at the port of Charleston after he had been several times rejected by the Senate. I refer to Doctor Crum.

Mr. WILLIS. I think that is true.

Mr. MOSES. He never was permitted to draw a salary at all, was he?

Mr. BLEASE. I do not know about him getting a salary, but he held the job, very much to the distaste of the people of South Carolina.

Mr. MOSES. He occupied the office in the customhouse, but he drew no pay.

Mr. KING. Mr. President, there are doubtless numerous precedents which could be cited and which doubtless would prove interesting and instructive, but the discussion has already occupied more time than I anticipated, and I shall hastily conclude.

The activities of some of the members of the Tariff Commission are not, in my opinion, satisfactory to the American people. That organization has ceased to properly function or to render genuine and valuable service to the American people. A majority of the commission seem to be unaware of the purpose for which it was created or the duties which its members were expected to perform. Controversy and confusion in the commission prevent intelligent and useful service. There appears to be factional strife and no sincere and earnest purpose to obtain data and information helpful to Congress when tariff legislation shall be under consideration. Some of the Members seem to regard the flexible provision of the Fordney-McCumber bill as the most important feature in the law, and apparently they are seeking in a political and partisan way to find pretexts to increase tariff rates upon a large number of commodities.

I have offered a bill which is pending before the Finance Committee to abolish the Tariff Commission. Of course, the majority party in Congress will not support this measure, though, from time to time, reactionary Republicans and the beneficiaries of high-protective tariff duties have condemned the Tariff Commission and declared in favor of its decapitation. The Tariff Commission was the result of a widespread feeling in the United States that certain industries were framing tariff legislation, coercing Congress into adopting schedules for the destruction of foreign competition in order that the domestic manufacturer might have absolute control of the domestic market. It was believed that an independent, courageous, and fair-minded commission could render an important public service in investigating the cost of production of commodities at home and abroad and in accumulating data and information relating to all factors connected with production and distribution. It was believed that this data would be helpful to Congress and enable it to more intelligently deal with tariff and revenue measures. Early appointees upon the Tariff Commission were men of high standing, of broad and liberal education, and of superior qualifications. Their work proved of value to Congress and to the country, but it is to be regretted that the work of the present Tariff Commission is not of the same high character. I desire, however, to pay tribute to the ability and fidelity to duty of Commissioner Costigan. He has rendered conspicuous service and proven that he has sought to make of the Tariff Commission a useful organization.

There is a feeling among many people that selfish interests in the United States have sought under the last two adminis-



trations to control various boards and commissions and to procure the appointment of persons whose views were in harmony with the philosophy that governs "big business" and those who are controlling the great financial interests of our country.

Mr. Roosevelt spoke of predatory wealth and its sinister and destructive influence. There are predatory interests in the United States to-day. There are business interests which are selfish and which seek to use the Government to advance and promote dangerous and unworthy schemes and policies. If the Interstate Commerce Commission, the Federal Trade Commission, the Tariff Commission, and the Department of Justice, which is charged with the duty of enforcing the laws against trusts and monopolies and combinations in restraint of trade, can be influenced or directed by unfaithful and selfish interests, then the security of our country is impaired and the safety of our institutions jeopardized.

Too much power, in my opinion, is being conferred upon the Federal Government and Federal agencies; but when it is conferred, then the agencies created and invested with power and all who wear the symbol of Federal authority, particularly in executive and administrative departments, must act with honor and fidelity and, above all, in a spirit of justice. The Government, which is the agent of the people, must be their servant and not their master. It must keep within the limits of conferred authority. It must serve all the people and not a special interest or class.

Mr. President, if the amendment which I have offered is adopted I believe the results will be good. It will further challenge attention to the unsatisfactory condition of the Tariff Commission and prove helpful, if the commission is not to be abolished, in securing its reformation, so that it may be put upon the pathway of duty and disinterested public service.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Utah.

The amendment was rejected.

Mr. KING. Mr. President, I will inquire of the Senator from Wyoming if there are any other amendments to be proposed to the bill.

Mr. WARREN. I do not know of any. The committee amendments have all been passed upon and the subject to which the Senator from Utah is now addressing himself has to do merely with the provisions of the bill as it came from the House. No amendment has been proposed to that provision.

Mr. NORRIS. Mr. President, did the Senator from Utah inquire whether other amendments would be offered?

Mr. KING. Yes.

Mr. NORRIS. I have an amendment that I desire to offer.

Mr. KING. The reason I made the inquiry is—and I want to be entirely frank with my colleagues here—that I am going to discuss the Hunt case and the maladministration of the Federal Trade Commission under the present régime. It will take me from one to two hours, and I do not want to keep Senators here so late if there is no other matter before the Senate. I can resume the discussion to-morrow morning, but if we are to remain here indefinitely I will proceed.

Mr. WARREN. Does the Senator think that is an exactly fair statement? I wasted two days of my time here waiting for the Senator to make the speech he is now making.

Mr. KING. We have been discussing to-day the long and short haul bill, which had precedence.

Mr. WARREN. That is true, but—

Mr. KING. Yes; and I have been here, I will say to the Senator, all day.

Mr. WARREN. But I had to sit here to call up the appropriation bill whenever speeches on the unfinished business were concluded and an opportunity was afforded me to have the appropriation bill taken up.

Mr. KING. I do not think Senators have wasted the time of the Senate, because the unfinished business is a more important measure than the appropriation bill.

Mr. WARREN. I am ready to stay here until midnight; I do not care.

Mr. KING. I want to accommodate the Senator. I will not quarrel with him.

Mr. WARREN. I am not quarreling with the Senator.

Mr. KING. I should like to ask the Senator from Nebraska how long it will take to consider the matter which he desires to present?

Mr. NORRIS. I do not know how long the amendment will take. I am going to address the Senate on the question of the Federal Trade Commission, and the amendment which I have to offer pertains to the provisions of the bill regarding the Federal Trade Commission. I do not feel like apologizing.

Nobody has tried to delay this bill, and I am very sorry the Senator from Wyoming feels aggrieved.

Mr. WARREN. Does not the Senator know that I have some other engagements not on the floor but in the Committee on Appropriations?

Mr. NORRIS. The Senator is not the only one in that category; but he says, "I want this bill passed now."

Mr. WARREN. For how long have I been trying to secure the passage of the bill?

Mr. NORRIS. I do not know how long the Senator has been trying to do that.

Mr. WARREN. For four or five days.

Mr. NORRIS. But the Senator can not certainly complain of the discussion that has been taking place upon the bill. I am very sorry if he feels that way about it, but that will not deter me from offering the amendment.

Mr. WARREN. Of course, the intent is perfectly plain to make me in some way suffer a long delay.

Mr. NORRIS. There is not anything in that. The Senator certainly can not be serious about that.

Mr. WARREN. I am merely serious in sitting here and waiting for Senators to proceed.

Mr. NORRIS. The Senator must not feel, because some other Senator wishes to offer an amendment, that it is done to make him suffer.

Mr. WARREN. I expect, of course, that amendments will be offered.

Mr. NORRIS. The Senator ought to expect amendments to be offered, and he ought not to get angry because some Senator is going to offer one.

Mr. WARREN. I am not angry; I am merely sorry that the Senator from Nebraska is angry!

Mr. NORRIS. It is not done for the purpose of giving the Senator any trouble. I am free to say that when I was thinking of my amendment and of what I intended to say I did not have the Senator from Wyoming in mind. If I had thought it would aggravate him, of course I would perhaps have changed my mind and concluded not to say anything, because I certainly do not want to cause the Senator from Wyoming any anxiety.

Mr. KING. Mr. President, it is apparent that my good offices have failed. I want to say to the Senator from Wyoming—and I say it in all kindness—that appropriation bills, while they are important, are not the only important bills, and, while the Senator from Wyoming has much to do as chairman of the Appropriations Committee, some of the rest of us also have something to do. Many of us are members of committees which hold sessions that occupy us from two to six hours every day, and, to use the expression of the Senator, we have to waste our time while some appropriation bills and other bills are before the Senate.

Mr. President, we must consider these questions in a gracious spirit. The Senator can not rush through the appropriation bills in a minute. Here is a bill carrying more than \$500,000,000. If we did our duty, we would spend hours in analyzing this bill.

Mr. NORRIS. Will the Senator yield for an interruption?

Mr. KING. I yield.

Mr. NORRIS. Right on that point I should like to suggest to the Senator from Utah that it has been true as to appropriation bills that Senators have so many other things to do that many of them are not present when they are being considered. I speak of that without any censure whatever, because I know the work that all Senators have to do in various committees and otherwise. But what the Senator from Utah says is true, that we are passing appropriation bills without a great deal of scrutiny. The pending bill carries something over \$500,000,000, and we have only had a few hours' debate on it; yet we get into trouble with our superiors, our leaders, when we propose to offer amendments or speak upon it. I think we ought to have considered seriously the provision which the Senator from Utah is discussing, and perhaps eliminate entirely from this bill the appropriation for the Federal Trade Commission. So far as I am concerned, I would vote for it. When amendments are offered with only a few Senators present, and the Chair sustains points of order against them, we know that an appeal would mean that those not here and who have not heard the debate would come in and, as a matter of form, vote to sustain the committee and sustain the Chair.

So I do not see that we owe any apology because we want to discuss some of the provisions that are in this measure, and I do not think that it comes with good grace for any Senator to say, "We want to get this \$500,000,000 appropriation bill through here in an hour and a half or an hour and 15 minutes."



Mr. WARREN. Mr. President, the Senator is in a kindly mood. This bill carries an appropriation of something over \$500,000,000, and has been before the Senate about four days.

Mr. NORRIS. Yes; but we have been considering other measures. For instance, nearly all of to-day there has been another bill under consideration.

Mr. WARREN. That is very true.

Mr. NORRIS. That is not the Senator's fault, nor is it mine.

Mr. WARREN. No; but I ask the Senator, will there ever be a time when there will not be Senators in a committee or engaged in other work while we are considering appropriation bills?

Mr. NORRIS. Probably not; but there are more Senators here during the consideration of other bills than there are during the consideration of appropriation bills. I suppose that is because the Senators have great faith and confidence in the chairman of the Committee on Appropriations and they think that whatever he says ought to go.

Mr. WARREN. I was going to say, so far as putting the bill aside until to-morrow is concerned, that I am perfectly willing that that be done, but I do not like to have the Senator from Utah take the attitude of threatening that we will have to stay up all night unless he is accommodated.

Mr. KING. Mr. President, that is the Senator's own attitude. I said I was perfectly willing, if there were no other amendments to be offered, to pretermitt discussion to-night and speak to-morrow, so that the bill might pass to-night, but the Senator said we would be here all night. He was the one, not I, who made the statement.

Mr. WARREN. If the Senator from Nebraska desires me to ask that the bill go over, I shall be delighted to have that done.

Mr. NORRIS. It is almost immaterial to me, but I think the Senator from Wyoming ought to allow it to go over until to-morrow.

Mr. WARREN. The Senator from Nebraska wishes that the bill may now be laid aside until to-morrow morning; and I therefore ask that the bill be laid aside.

Mr. KING. I want to say to the Senator that he and I are good friends, and I do not want him to misunderstand me. I digressed in the midst of my speech and asked if there were any further amendments to be offered, and said that I would be perfectly willing, if we could get through with those amendments, to postpone my speech until to-morrow and pass the bill to-night. I did not ask the Senator to sit here; I wanted to get away.

Mr. WARREN. If the Senator will allow me, I can not be here to-morrow, and, of course, the bill will have to be laid aside over to-morrow.

Mr. KING. I had no objection to action being taken on it to-night. I now yield the floor for the day.

#### ORDER FOR RECESS

Mr. JONES of Washington. I ask unanimous consent that when the Senate concludes its business to-day it take a recess until 12 o'clock to-morrow.

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

Mr. GLASS. Mr. President, what has been decided about the continuation of the consideration of the appropriation bill?

Mr. JONES of Washington. Its consideration will be continued to-morrow.

The VICE PRESIDENT. The appropriation bill is before the Senate as in Committee of the Whole and open to amendment.

Mr. SMOOT. It will come up the first thing to-morrow, as I understand.

#### EXECUTIVE SESSION

Mr. JONES of Washington. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened, and (at 5 o'clock and 25 minutes p. m.) the Senate, under the order previously entered, took a recess until to-morrow, Wednesday, March 17, 1926, at 12 o'clock meridian.

#### CONFIRMATIONS

*Executive nominations confirmed by the Senate March 16 (legislative day of March 15), 1926*

##### UNITED STATES ATTORNEYS

Thomas P. Revelle to be United States attorney, western district of Washington.

Roy C. Fox to be United States attorney, eastern district of Washington.

E. B. Benn to be United States marsal, western district of Washington.

##### REGISTER OF THE LAND OFFICE

David Leland Spaulding to be register of the land office at Seattle, Wash.

##### PROMOTIONS BY TRANSFER IN THE ARMY

Floyd Thomas Gillespie to be first lieutenant, Signal Corps.  
Wilfred Hill Steward to be first lieutenant, Coast Artillery Corps.

Richard Gernant Herbine to be second lieutenant, Infantry.

##### PROMOTIONS IN THE ARMY

George Oremaudle Hubbard to be colonel, Coast Artillery Corps.

Thomas Burt to be lieutenant colonel, Infantry.

Harrison Willard Smith to be major, Quartermaster Corps.

Horace Grant Rice to be major, Finance Department.

Henry Christopher Harrison, jr., to be captain, Field Artillery.

Hanford Nichols Lockwood, jr., to be captain, Field Artillery.

John Markham Ferguson to be captain, Infantry.

Joseph Saunders Johnson, jr., to be captain, Infantry.

John Kenneth Sells to be first lieutenant, Cavalry.

Douglas Cameron to be first lieutenant, Cavalry.

Arthur Jennings Grimes to be first lieutenant, Infantry.

Walter Duval Webb, jr., to be first lieutenant, Field Artillery.

Ernest Starkey Moon to be first lieutenant, Air Service.

Harry Craven Dayton to be first lieutenant, Field Artillery.

Edward Charles Engelhardt to be first lieutenant, Field Artillery.

Chester Arthur Carlsten to be first lieutenant, Infantry.

Joseph Myles Williams to be first lieutenant, Cavalry.

Harold Arthur Doherty to be first lieutenant, Field Artillery.

Eleuterio Susi Yanga to be first lieutenant, Philippine Scouts.

##### GENERAL OFFICER

Richard Coke Marshall, jr., to be brigadier general, Reserve Corps.

##### POSTMASTERS

###### ALABAMA

Joseph D. Prunett, Boaz.  
Charles W. Chambers, Cherokee.  
Meige C. Bronson, Dadeville.  
Tommie P. Lewis, Seale.  
Pallie M. Ellis, Valley Head.  
Henry E. Hart, Waverly.  
George M. Baker, Wilsonville.

###### ARIZONA

James L. T. Watters, Duncan.

###### IDAHO

Laura S. Enberg, Fruitland.  
Hattie Hibbs, Lapwai.  
Ross J. Pettijohn, Melba.  
Ira W. Moore, St. Anthony.  
Charles H. Hoag, Worley.

###### INDIANA

John R. Kelley, National Military Home.

###### IOWA

Cleon F. Wigton, Britt.  
Armanis F. Patton, Gowrie.  
Lynn McCracken, Manilla.  
Keith L. McClurkin, Morning Sun.  
Ida G. Schloeman, Norway.  
Danel O. Clark, Ogden.  
Otto Anderson, Ossian.  
Leo E. Perry, Rhodes.  
Ralph S. Van Hooser, Terril.  
Charles P. Worrell, Whiting.

###### KANSAS

Harry T. Hill, Colony.  
Samuel N. Nunemaker, Hesston.  
Eva M. Baird, Spearville.

###### MAINE

Charles E. Davis, Eastport.  
Theresa M. Tozier, Patten.

###### MARYLAND

Mary W. Stewart, Oxford.



## MASSACHUSETTS

Benjamin Derby, Concord Junction.  
Jennie L. Holbrook, East Douglas.  
L. Warren King, East Taunton.  
Effie M. Ellis, East Wareham.  
Frederick M. Hickey, Grafton.  
Donald A. MacDonald, Mittineague.  
Doris B. Daniels, Shrewsbury.  
L. Edward St. Onge, Ware.  
Lester M. Blair, Whitinsville.

## MICHIGAN

Helen G. Smith, Mohawk.

## MISSOURI

Omar M. Drysdale, Amoret.  
William H. Lerbs, Berger.  
Colmore Gray, Billings.  
Elias K. Horine, Cassville.  
Alfred G. Neville, Eldon.  
Ralph E. Carr, Eminence.  
Edwin H. Vemmer, Gerald.  
Leonard Ancell, Higbee.  
James A. Pidcock, Lockwood.  
Charles B. Genz, Louisiana.  
John A. Jones, Marshall.  
Frank J. Black, Meadville.  
James H. Somerville, Mercer.  
Glenn S. Elliston, Montrose.  
John E. Swearingen, New Bloomfield.  
James D. A. Hood, jr., Republic.  
Harland F. Kleppinger, Rockville.  
John S. Dickey, Sugar Creek.  
Benjamin F. Northcott, Sumner.  
May Venard, Tina.  
Leland T. Moore, Warsaw.

## MONTANA

Henry O. Woare, Chester.  
Sidney Bennett, Scobey.

## NEW JERSEY

Alfred P. Jolin, High Bridge.  
Michael A. Eganey, Lincoln.  
Fannie H. Clayton, Seaside Park.  
Harry J. Manning, South Plainfield.

## NEW YORK

Melvin A. Marble, Clayton.  
Harry J. Goodfellow, Fayetteville.  
Harold E. Sargent, Liverpool.  
Lewis O. Wilson, Long Beach.  
William H. Evans, Morrisville.  
David R. Dunn, Scarsdale.

## NORTH CAROLINA

Robert O. Smith, Creedmoor.  
Gideon T. Matthews, Rocky Mount.  
Judson D. Albright, Charlotte.

## OHIO

Egbert H. Phelps, Andover.  
William S. Burcher, Beallsville.  
Frank M. McCoy, Bloomingsburg.  
George F. Ruggles, Jefferson.  
Cortelle B. Hamilton, Kinsman.  
Adda B. Henkle, Larue.  
William F. Lafferre, Lewisville.  
Leonard L. Harding, Milford.  
Harry H. Davis, New Holland.  
Theodore S. Hephlinger, New Philadelphia.  
William T. Sprankel, New Straitsville.  
Mathias Tolson, Salineville.  
James W. Rush, Sardis.  
Fred Mills, Sebring.  
Ward B. Petty, Sycamore.  
John F. McQueen, Wellsville.

## OKLAHOMA

John K. Miller, Apache.  
Alpha Rutherford, Bennington.  
Grace L. Taylor, Blair.  
William N. Williams, Broken Arrow.  
Jasper A. Bartley, Choteau.  
George A. Smith, Devol.  
James W. Hinson, Fletcher.  
Thomas E. Miller, Francis.  
John M. Tyler, Idabel.  
Frances Townsend, McLoud.  
Ulysses S. Curry, Newkirk.

John D. Morrison, Red Oak.  
Sanford I. Pennington, Ringling.  
Charles White, Washington.

## OREGON

Minta D. Cathers, Wheeler.

## PENNSYLVANIA

Dolph T. Lindley, Canton.  
Fred F. Duke, Clifton Heights.  
Samuel W. Hodgson, Cochranville.  
William Rosemergy, Mayfield.

## SOUTH DAKOTA

William J. Ryan, Bridgewater.  
Amlin A. Isakson, Canton.  
Chris Wittmayer, Eureka.

## TEXAS

Marshall Callaway, Howe.  
Collins M. Click, Lovelady.  
Silas T. Compton, Mount Enterprise.  
Rufus L. Hybarger, Pineland.  
Joseph E. Willis, Rochelle.  
Mary E. Holtzclaw, Tatum.

## UTAH

Eugene Chatlin, Helper.

## VIRGINIA

Bascom N. Mustard, Bland.  
Alexander L. Martin, Catawba Sanatorium.  
James W. Milton, Eagle Rock.  
Norman V. Fitzwater, Elkton.  
Ernest A. de Bordenave, Franklin.  
William W. Hurt, Max Meadows.  
Daisy D. Slaven, Monterey.  
Byrd E. Carper, Newcastle.  
James E. Johnson, New Church.  
Robert E. Fugate, Nickelsville.  
Floyd E. Ellis, Roanoke.  
George N. Kirk, St. Charles.  
Frank M. Phillips, Shenandoah.  
Lee S. Wolfe, South Boston.  
John W. Layman, Troutville.  
Frank J. Garland, Warsaw.  
Henry C. Calloway, jr., West Graham.

## WASHINGTON

Jesse Simmons, Carnation.  
Harry L. Bras, Centralia.  
William H. Padley, Reardan.  
Henry R. James, Rochester.  
Orie G. Scott, Tekoa.

## WEST VIRGINIA

Hattie Brown, Bramwell.  
Fanny Murray, Sandyville.

## WISCONSIN

John W. Crandall, Deerbrook.  
Michael C. Keasling, Exeland.  
George B. Aschenbrener, Fiffeld.  
Chester A. Minshall, Viroqua.  
Carl R. Anderson, Weyerhauser.

## HOUSE OF REPRESENTATIVES

TUESDAY, *March 16, 1926*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O God, our heavenly Father, Judge of all men, and unto whom all hearts are open, do Thou make Thy presence evident in the labor of this day. There is a guidance for each of us, and by reflection and lowly listening we shall know the way. May all considerations be lifted to the high level of unfailing devotion to the country that has called us. In the strain of toil, and it will come; in the fret of care, and it will disturb; in the maze of exactions, and they will entangle, be with us. May courage be strong, vision clear, and all hearts kept pure. Bless us this day with large conceptions of duty and a deep and abiding sense of our responsibilities. Through Christ our Savior. Amen.

The Journal of the proceedings of yesterday was read and approved.

## CALENDAR WEDNESDAY

Mr. TILSON. Mr. Speaker, I ask unanimous consent that Calendar Wednesday business for this week be dispensed with.